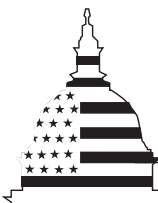


April 2001

FORMER SOVIET UNION

U.S. Rule of Law Assistance Has Had Limited Impact



G A O

Accountability * Integrity * Reliability

Form SF298 Citation Data

Report Date <i>("DD MON YYYY")</i> 00APR2001	Report Type N/A	Dates Covered (from... to) <i>("DD MON YYYY")</i>
Title and Subtitle FORMER SOVIET UNION: U.S. Rule of Law Assistance Has Had Limited Impact		Contract or Grant Number
		Program Element Number
Authors		Project Number
		Task Number
		Work Unit Number
Performing Organization Name(s) and Address(es) General Accounting Office, PO Box 37050, Washington, DC 20013		Performing Organization Number(s) GAO-01-354
Sponsoring/Monitoring Agency Name(s) and Address(es)		Monitoring Agency Acronym
		Monitoring Agency Report Number(s)
Distribution/Availability Statement Approved for public release, distribution unlimited		
Supplementary Notes		
Abstract Since 1991, the 12 new independent states that emerged from the breakup of the Soviet Union 1 have been struggling to overcome a long tradition of totalitarian rule, marked by an arbitrary system of justice and state suppression of human rights. The U.S. governments efforts to support their transition to an enduring system of democracy and open markets include the promotion of the rule of law in these countries. According to the U.S. Agency for International Development (USAID), the rule of law embodies the basic principles of equal treatment of all people before the law and is founded on a predictable and transparent legal system with fair and effective judicial and law enforcement institutions to protect citizens against the arbitrary use of state authority and lawless acts. For fiscal years 1992 through 2000, the U.S. government has provided about \$216 million in assistance to help the new independent states of the former Soviet Union develop the sustainable institutions, traditions, and legal foundations for establishing a strong rule of law. The United States has aimed its assistance at helping these countries (1) establish a modern legal basis for the administration of justice, (2) create a strong and independent judiciary, (3) strengthen legal education for legal professionals operating within the system, (4) improve law enforcement practices, and (5) broaden access and participation of civil society 2 in the legal system. For the purposes of this report, we refer to this array of		
Subject Terms		

Document Classification unclassified	Classification of SF298 unclassified
Classification of Abstract unclassified	Limitation of Abstract unlimited
Number of Pages 74	

Contents

Letter		1
---------------	--	----------

Appendix I	Objectives, Scope, and Methodology	43
-------------------	---	-----------

Appendix II	Comments From the Department of State	46
--------------------	--	-----------

Appendix III	Comments From the Department of Justice	50
---------------------	--	-----------

Appendix IV	Comments From the U.S. Agency for International Development	56
--------------------	--	-----------

Appendix V	GAO Contacts and Staff Acknowledgments	69
-------------------	---	-----------

Tables		
	Table 1: U.S. Funding of Rule of Law Assistance Programs in the New Independent States, Fiscal Years 1992-2000	7
	Table 2: Rule of Law Ratings for the New Independent States, 1997-2000	32

Figures		
	Figure 1: Map of the New Independent States of the Former Soviet Union	6
	Figure 2: Percentage of Rule of Law Funding by Four Key U.S. Agencies, Fiscal Years 1992-2000	9
	Figure 3: Key Elements of U.S. Rule of Law Assistance Program	10
	Figure 4: Legal Foundation of U.S. Rule of Law Assistance Program	13
	Figure 5: Judicial Pillar of U.S. Rule of Law Assistance Program	16
	Figure 6: Legal Education Pillar of U.S. Rule of Law Assistance Program	21
	Figure 7: Law Enforcement Pillar of U.S. Rule of Law Assistance Program	25
	Figure 8: Civil Society Pillar of U.S. Rule of Law Assistance Program	29

Abbreviation

USAID	U.S. Agency for International Development
-------	---



United States General Accounting Office
Washington, DC 20548

April 17, 2001

The Honorable Christopher Shays
Chairman
The Honorable Dennis Kucinich
Ranking Minority Member
Subcommittee on National Security,
Veterans Affairs, and International Relations
Committee on Government Reform
House of Representatives

The Honorable Rod Blagojevich
House of Representatives

Since 1991, the 12 new independent states that emerged from the breakup of the Soviet Union¹ have been struggling to overcome a long tradition of totalitarian rule, marked by an arbitrary system of justice and state suppression of human rights. The U.S. government's efforts to support their transition to an enduring system of democracy and open markets include the promotion of the "rule of law" in these countries. According to the U.S. Agency for International Development (USAID), the rule of law embodies the basic principles of equal treatment of all people before the law and is founded on a predictable and transparent legal system with fair and effective judicial and law enforcement institutions to protect citizens against the arbitrary use of state authority and lawless acts.

For fiscal years 1992 through 2000, the U.S. government has provided about \$216 million in assistance to help the new independent states of the former Soviet Union develop the sustainable institutions, traditions, and legal foundations for establishing a strong rule of law. The United States has aimed its assistance at helping these countries (1) establish a modern legal basis for the administration of justice, (2) create a strong and independent judiciary, (3) strengthen legal education for legal professionals operating within the system, (4) improve law enforcement practices, and (5) broaden access and participation of civil society² in the legal system. For the purposes of this report, we refer to this array of

¹These nations are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

²Civil society includes the general population and nongovernmental organizations, such as associations, trade unions, and interest groups.

projects and assistance activities in the new independent states as the “U.S. rule of law assistance program.” These activities were largely implemented by the U.S. Agency for International Development and the Departments of State, Justice, and the Treasury, and were funded primarily by annual appropriations authorized under the Freedom Support Act of 1992.³ This program is one component of the overall assistance package, totaling more than \$6.3 billion from fiscal years 1993 through 2000, for the new independent states of the former Soviet Union.

To determine whether the U.S. government’s rule of law assistance program in the new independent states has been effective, you asked us to (1) assess the extent to which the program has had an impact on the development of the rule of law and whether the program results are sustainable⁴ and (2) analyze the factors that may have affected the program’s impact and sustainability.

To meet these objectives, we reviewed rule of law project documentation and interviewed knowledgeable officials from the key U.S. agencies providing this assistance. This report focuses primarily on Armenia, Georgia, Russia, and Ukraine, countries where the U.S. Agency for International Development has defined the development of the rule of law as a strategic objective.⁵ We conducted fieldwork in Russia and Ukraine, which have received at least half of the total U.S. rule of law assistance in this region, and interviewed U.S. government officials and senior host-country officials as well as representatives of many nongovernmental organizations and other project beneficiaries. To assess the impact and sustainability of specific projects, we reviewed the projects funded in Russia and Ukraine during fiscal years 1995 through 1998. For those countries in which we did not conduct fieldwork, we relied primarily on interviews with U.S. officials and documentation available in Washington, D.C., which addressed the results of the U.S. assistance efforts. A detailed

³“Freedom” in the name of this act stands for the Freedom for Russia and Emerging Eurasian Democracies and Open Markets (P.L. 102-511). Throughout this report, we refer to the act as the “Freedom Support Act.”

⁴“Sustainability” is the extent to which the benefits of a program extend beyond the program’s life span.

⁵According to USAID, a strategic objective is the most ambitious result that a USAID operating unit, such as a country mission, can materially affect, and for which it is willing to be held accountable.

description of our scope and methodology is included in appendix I of this report.

Results in Brief

Overall, the U.S. government's rule of law assistance efforts in the new independent states of the former Soviet Union have had limited impact so far, and results may not be sustainable in many cases. Establishing the rule of law is a complex and long-term undertaking in these countries, where laws and institutions were designed largely to further the power of the state. U.S. agencies have helped support a variety of legal system reforms in this region and have introduced some innovative legal concepts and practices in the areas of legislative and judicial reform, legal education, law enforcement, and civil society, which may contribute to a stronger rule of law in the future. For example, the United States helped establish legal education clinics in Russian and Ukrainian law schools. These clinics provide practical training for future lawyers as well as greater access by the poor to legal remedies for their problems. However, it is not clear whether U.S.-supported reforms and innovations are likely to be sustained. In some cases, countries have not clearly adopted on a wide scale the new concepts and practices that the United States has advocated. In other cases, continuation or expansion of the innovations depends on further funding from the U.S. government or other foreign donors. Despite the accomplishments of the program, progress toward establishing the rule of law has been slow in the new independent states, and in several countries, including Russia and Ukraine, the situation appears to have deteriorated in recent years, according to data monitored by U.S. agencies and a host of U.S. government and foreign officials we interviewed.

The impact and sustainability of U.S. rule of law assistance programs have been constrained by a number of factors, including limited political consensus on reforms, a shortage of domestic resources for many of the more expensive innovations, and weaknesses in the design and management of assistance programs by U.S. agencies. The first two factors have created a very difficult environment in which to foster rule of law development. As a result of limited political consensus by lawmakers and leaders in the new independent states of the former Soviet Union, many important legislative and institutional components of the rule of law have not been established. These components include the passage of some post-Soviet-era criminal and civil codes and procedures. In addition, with the poor economic performance of most of these countries, limited domestic funds have been available from public and private sources to sustain and expand the legal system reforms and efforts supported by the United States, such as jury trials and continuing legal education. Finally, U.S.

agencies and organizations conducting these aid projects have not always designed and implemented them with an emphasis on achieving and monitoring impact and sustainability. The Departments of State, Justice, and the Treasury have not developed specific strategies for achieving long-term objectives, or desired “outcomes,” of their assistance projects, such as reforming national law enforcement practices. Instead, efforts have often been focused on achieving limited, short-term “outputs,” such as training a finite number of people or supplying them with certain equipment or educational materials. Further, none of the U.S. agencies, including the U.S. Agency for International Development, have effective monitoring and evaluation systems in place to assess fully the longer-term results and sustainability of their efforts and reorient their projects based on a thorough understanding of the lessons learned. Recently, U.S. agencies have begun to pay increased attention to improving project planning and evaluation and are in the process of making program reforms. However, a significant amount of the State Department’s current funding for this program—about \$30 million—has been budgeted, but not yet spent, for projects that were designed prior to the establishment of these program reforms.

In this report we make recommendations to the Secretary of State, the Attorney General, the Secretary of the Treasury, and the Administrator of the U.S. Agency for International Development, who together administer nearly all of the funding for this program, to improve program management. Specifically, we recommended that they implement requirements for projects to include (1) specific strategies for achieving impact and sustainable results and (2) monitoring and evaluation of outcomes. In written comments on a draft of this report, State, Justice, and the U.S. Agency for International Development generally agreed that the program management improvements we recommended are needed.⁶ However, the agencies felt that we measured program success by too high a standard given the complex and long-term task of establishing the rule of law; that we did not adequately acknowledge some significant program accomplishments and evaluation efforts; and that we understated the significance of weak political will as a factor limiting program impact and sustainability. We have modified the report and included some additional information, where appropriate, to address the agencies’ comments. However, our overall conclusions remain essentially unchanged.

⁶Treasury did not comment on the report draft.

Background

In December 1991, after more than 70 years of Communist rule, the Soviet Union came to an abrupt end, and the 12 new independent states emerging from the breakup started their transition to market-based democracies (see fig. 1 for a map of the 12 states). According to a 1993 study prepared for the U.S. Agency for International Development, and legal experts, these countries inherited legal systems that were, in many respects, the antitheses of the rule of law.⁷ According to this study, under the Soviet Union, law was created by an elite without general participation and was designed to further the power of the state, not to limit it. In addition, the law was applied on an ad hoc basis to achieve political goals. Private economic activity was discouraged, and the Soviet Union lacked the basic legal framework needed to facilitate and regulate private enterprise. All the actors in the legal system were, to one degree or another, under the control of the Communist party and at the service of the state. The state procuracy (prosecutor) oversaw criminal investigations and prosecutions in a heavy-handed manner, affording defendants few, if any, rights. Law enforcement agencies were inexperienced in addressing many types of crimes that would come to plague the region and threaten other countries, such as organized crime and drug trafficking. The government and the Communist party controlled both access to legal education and the licensing of lawyers. With its tradition of unpublished and secret administrative regulation, the state also limited public access to the legal system and legal information; as a result, citizens regarded the legal system with suspicion and questioned its legitimacy, according to the USAID-sponsored study. According to legal experts, courts in the Soviet Union were weak, lacked independence, and enjoyed little public respect.⁸ Administration of justice was poorly funded, facilities were not well maintained, and judges were poorly paid and received very little, if any, training.

⁷*An Assessment of Prospects for U.S. Assistance to Support the Rule of Law in Russia* (Madison, WI: University of Wisconsin, 1993).

⁸P. Solomon and T. Fogelson, *Courts and Transition in Russia: the Challenge of Judicial Reform* (Boulder, CO: Westview Press, 2000).

Figure 1: Map of the New Independent States of the Former Soviet Union



Source: GAO.

For fiscal years 1992 through 2000, the United States has obligated at least \$216 million in assistance to help establish the rule of law in the new independent states of the former Soviet Union. For fiscal years 1998 through 2000, U.S. assistance under this program has averaged about \$29 million per year. Table 1 illustrates the estimated distribution of this funding among these countries. Over half of the funding has been devoted

to four countries where USAID has designated rule of law development as a strategic objective:⁹ Russia, Ukraine, Georgia, and Armenia. While the remaining countries have received some rule of law assistance, USAID has not made rule of law development a strategic objective in these countries. According to USAID and State, the U.S. rule of law assistance program, along with other programs of U.S. assistance to Central and Eastern Europe and the new independent states, was envisioned by the U.S. government to be a short-term program to jump-start the countries of this strategically critical region on their way to political and economic transition.

Table 1: U.S. Funding of Rule of Law Assistance Programs in the New Independent States, Fiscal Years 1992-2000

Dollars in millions		
Country	Amount	Percent
Russia	\$77	35
Ukraine	25	12
Georgia	8	4
Armenia	6	3
All others ^a	36	16
Multiple countries ^b	64	30
Total	\$216	100

Note: Data on U.S. rule of law funding are estimates provided by USAID and the Departments of State, Justice, and the Treasury.

^a "All others" includes Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

^b Assistance in this category was provided to two or more countries within the region and could not readily be broken out by recipient countries.

Source: GAO analysis of U.S. agencies' rule of law funding data.

Many other foreign and U.S.-based donors have provided rule of law assistance to the new independent states. For example, the World Bank has a program to lend Russia \$58 million for legal system reform. Many Western European countries, the European Union, and private international donors, such as the Ford Foundation and the Soros Foundation, have also financed projects similar to those funded by the United States. Funding data for these activities were not readily available,

⁹ According to USAID, a strategic objective is the most ambitious result that a USAID operating unit, such as a country mission, can materially affect, and for which it is willing to be held accountable.

and we did not attempt to determine the value of all of this assistance, given the difficulty involved in identifying the many different efforts and their costs.

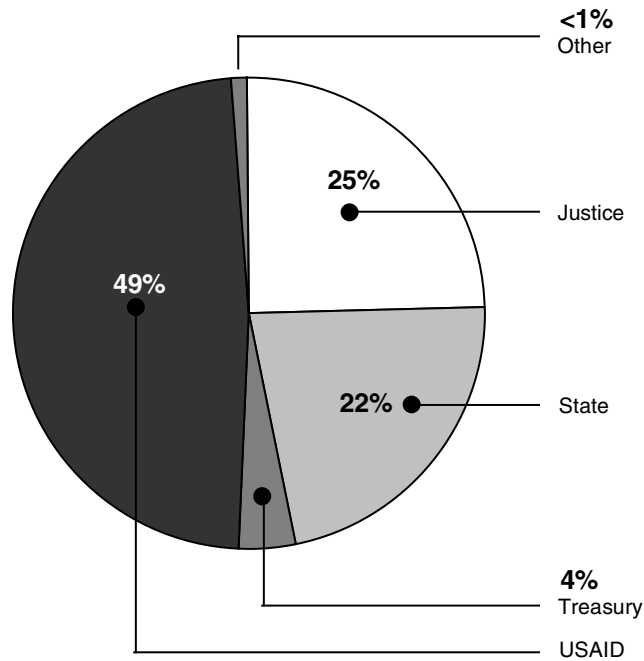
Fostering sustainable results through U.S. assistance projects is critical to the impact and ultimate success of this program. According to USAID's strategic plan,¹⁰ promoting sustainable development among developing and transitional countries contributes to U.S. national interests and is a necessary and critical component of America's role as a world leader. Strengthening the rule of law is a key component of USAID's strategic goal of building sustainable democracies. The right conditions for development can only be created by the people and governments of developing and transitional countries, according to USAID. In the right settings, however, American resources, including its ideas and values, can be powerful catalysts enabling sustainable development. Achieving sustainable project results is especially important in areas where development is likely to be a difficult and long-term process, such as establishing the rule of law in this region.

Four Key U.S. Agencies Implement the Rule of Law Assistance Program

Almost all U.S. funding for rule of law assistance in the new independent states of the former Soviet Union, authorized under the Freedom Support Act of 1992, is appropriated to USAID and the Department of State. However, a significant amount of assistance has been allocated to the Departments of Justice and Treasury through interagency fund transfers from USAID and State. As shown in figure 2, from fiscal years 1992 through 2000, USAID has administered about 49 percent of program funding for rule of law activities in this region, while the Departments of Justice, State, and the Treasury have administered about 51 percent.

¹⁰See "USAID Strategic Plan," available on the World Wide Web at www.usaid.gov.

Figure 2: Percentage of Rule of Law Funding by Four Key U.S. Agencies, Fiscal Years 1992-2000



Note: State funding information includes activities initially implemented by the U.S. Information Agency and later by its successor, State's Bureau of Educational and Cultural Affairs. Other agencies implementing smaller projects with interagency fund transfers from State include the Department of Energy, the U.S. Coast Guard, the Environmental Protection Agency, and the U.S. Office of Government Ethics. The total cost of these projects represents less than 1 percent of total program funds.

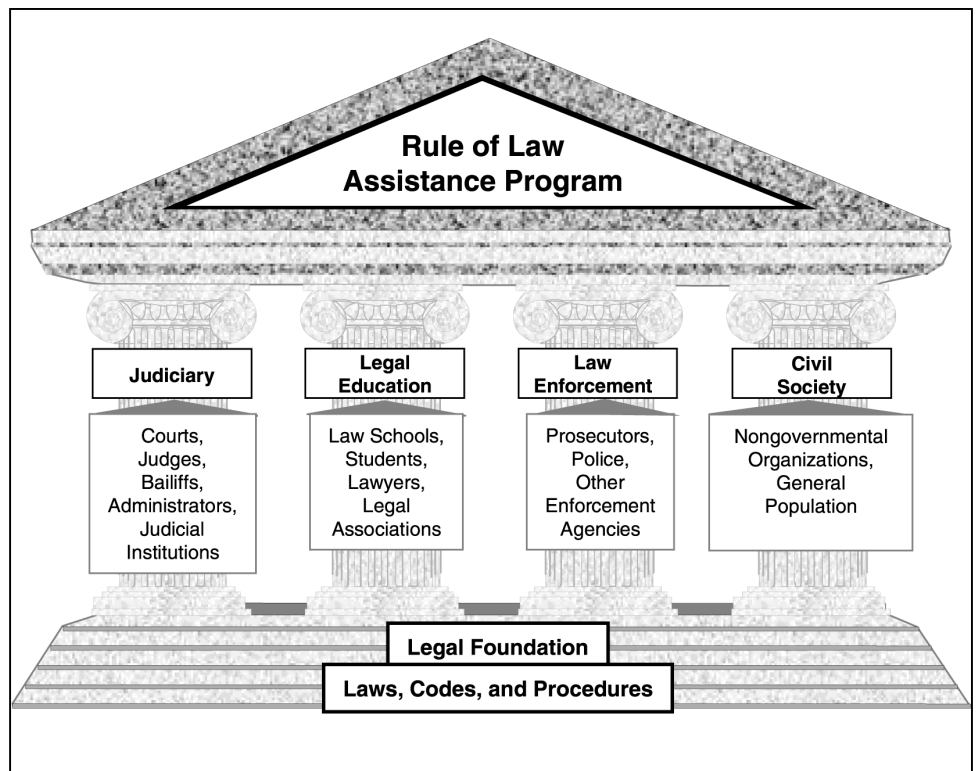
Source: GAO analysis of rule of law funding data provided by agencies.

These agencies provide assistance under this program through a variety of means, primarily in the form of goods and services to governmental and nongovernmental organizations and individuals. For some projects, such as law enforcement training, U.S. government agencies provide the assistance directly. For other projects, such as institutional development projects, the agencies distribute aid to beneficiaries through contracts, cooperative agreements, and grants to nongovernmental organizations, private voluntary organizations, and firms located in the United States or overseas. Assistance is generally not provided directly to foreign governments through cash disbursements.

Five Elements of the U.S. Rule of Law Assistance Program

The United States has taken a broad approach to providing rule of law assistance. The assistance approach generally incorporates five elements: (1) developing a legal foundation for reform, (2) strengthening the judiciary, (3) modernizing legal education, (4) improving law enforcement practices, and (5) increasing civil society's access to justice. (See fig. 3 for an illustration of these elements.)

Figure 3: Key Elements of U.S. Rule of Law Assistance Program



Source: GAO.

Developing a legal foundation for reform: Projects under this element have focused on assisting governments in passing legislation that would provide the legal basis for a transparent and predictable administration of justice system, including a post-communist constitution, a law establishing an independent judiciary, and post-Soviet-era civil and criminal codes and procedures. This element also includes efforts to strengthen the legislative process.

Strengthening the judiciary: Projects under this element involve strengthening the independence of the judiciary and the efficiency and effectiveness of the courts, including increasing the expertise and status of judges and supporting the development of judicial institutions.

Modernizing legal education: Projects under this component have concentrated on improving legal education available to both students and practitioners of the law, including modernizing law school curricula, establishing legal clinics for law students, and developing indigenous continuing legal education opportunities for practicing lawyers and other legal professionals.

Improving law enforcement practices: Projects under this component have been aimed at improving law enforcement practices by training procurators and other law enforcement personnel in modern techniques of criminal investigation and prosecution that are effective yet respectful of citizens' civil rights.

Increasing civil society's access to justice: Projects under this component have targeted the participation of nongovernmental organizations and the general population in the judicial sector to make legal information and access to justice affordable and realizable.

In general, USAID implements assistance projects primarily aimed at development of the judiciary, legislative reform, legal education, and civil society. The Departments of State, Justice, and the Treasury provide assistance for criminal law reform and law enforcement projects.

Though the program has generally included these elements throughout its existence, it has evolved over the years in response to lessons learned about effectiveness and to adapt to emerging constraints. For example, in the earlier years of the program, the United States emphasized promotion of western methods and models for reform. As it became clear that host country officials often did not consider these to be appropriate to their local contexts, USAID projects began to foster the development of more "home-grown" reforms. Also, in Russia, the United States has placed increasing emphasis on regional projects outside of Moscow instead of projects aimed at the central government, as regional officials were often more receptive to reform.

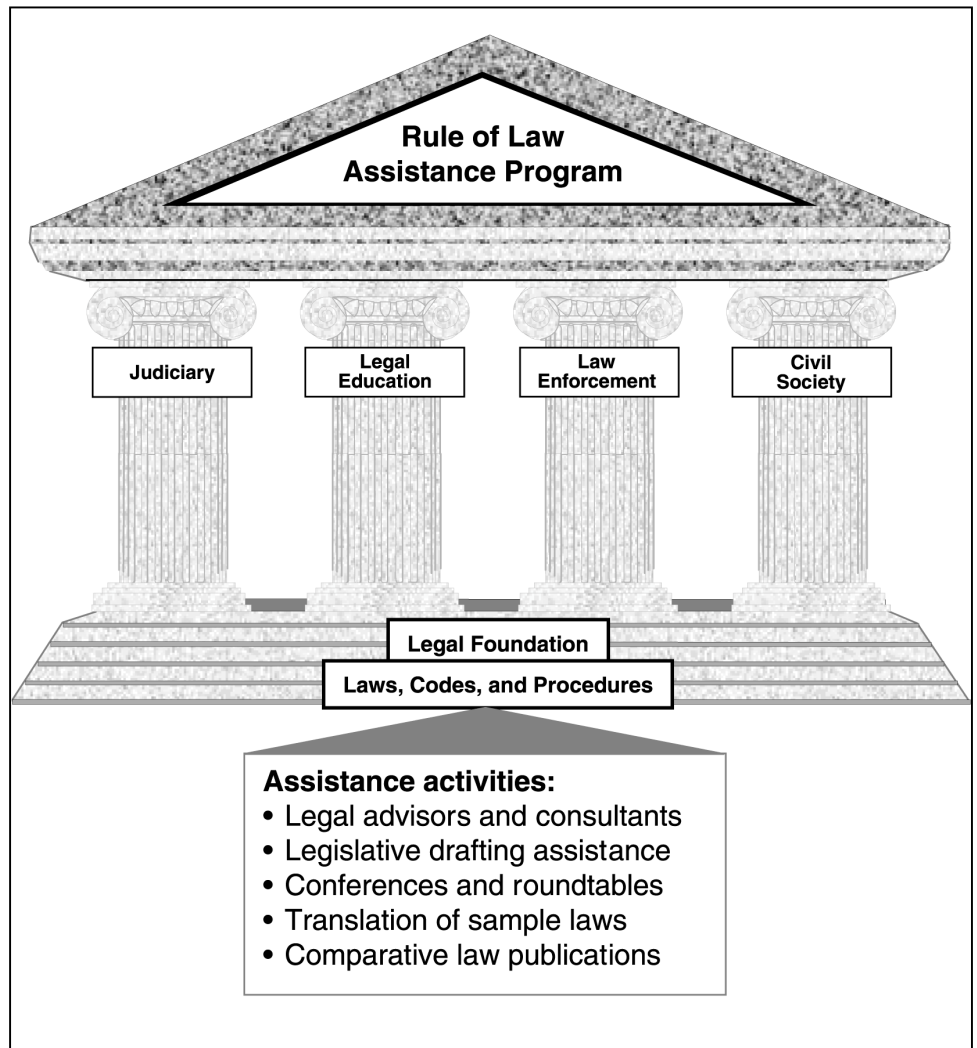
U.S. Assistance Has Had Limited Results; Project Sustainability in Question

Establishing the rule of law in the new independent states of the former Soviet Union has proven to be an extremely complex and challenging task that is likely to take many years to accomplish. U.S. assistance has had limited results, and the sustainability of those results is uncertain. In each of the five elements of the rule of law assistance program, the United States has succeeded in exposing these countries to innovative legal concepts and practices that could lead to a stronger rule of law in the future. However, we could not find evidence that many of these concepts and practices have been widely adopted. At this point, many of the U.S.-assisted reforms are dependent on continued donor funding in order to be sustained. Despite some positive developments, the reform movement has proceeded slowly overall, and the establishment of the rule of law in the new independent states remains elusive.

Legal Foundation: Some Key Reform Laws Have Been Passed, but Others Remain Unfinished

A key focus of the U.S. rule of law assistance programs has been the development of a legal foundation for reform of the justice system in the new independent states. (See fig. 4 for activities involving the legislative foundation of the rule of law assistance program.) The United States has helped several of these countries adopt new constitutions and pass legislation establishing independent judiciaries and post-communist civil and criminal codes and procedures, as well as other legislation that supports democratic and market-oriented reform. Despite considerable progress in a few countries, major gaps persist in the legal foundation for reform, particularly in such countries as Ukraine, a major beneficiary of U.S. rule of law assistance, according to U.S. and foreign government officials we interviewed.

Figure 4: Legal Foundation of U.S. Rule of Law Assistance Program



Source: GAO.

U.S. projects in legislative assistance have been fruitful in Russia, Georgia, and Armenia, according to several evaluations of this assistance, which point to progress in passing key new laws. For example, according to a 1996 independent evaluation of the legal reform assistance program, major advances in Russian legal reform occurred in areas that USAID programs

had targeted for support, including the passage of a new civil code and a series of commercial laws.¹¹ This legislation included the 1996 Russian Federation Constitutional Law on the Judicial System and the 1998 Law on the Judicial Department, creating a more independent judicial branch within the Russian government. The Department of Justice provided technical assistance and advice to lawmakers in the passage of Russia's new criminal code as well, which, according to Justice, formally eliminated the Soviet laws against private economic activity, free speech, and political dissent. Georgia has also passed many key pieces of legislation with U.S. assistance in the areas of improving the judiciary, the procuracy (the prosecutor), the media, and the criminal justice process, according to another evaluation we reviewed.¹² In Armenia, as well, according to a 2000 USAID-sponsored evaluation, important legislation was adopted as a result of U.S. government assistance, including a new civil code, criminal procedure code, Law on the Judiciary, Law on the Status of Judges, Law on the Execution of Court Judgments, Law on Advocates, and a universal electoral code.¹³ The results of assistance in this area are not easy to discern in all cases. For example, a 1999 USAID-sponsored evaluation of a portion of the legislative assistance and policy advice provided to Russia in the mid- to late 1990s indicates that the impact of this aid could not be independently verified.¹⁴

U.S. projects to help countries achieve passage of critical legal reform legislation have not always been successful, and key legislation is lacking in several new independent states. Despite providing assistance to reform legislation, Ukraine has not yet passed any new laws on the judiciary or new criminal, civil, administrative, or procedure codes since a new constitution was passed in 1996. In Russia, a revised criminal procedure code, a key component of the overall judicial reform effort, has still not been adopted by the government, despite extensive assistance from the Department of Justice in developing legislative proposals.

¹¹ *USAID Programs Supporting Commercial Law and Other Legal Reform in the Russian Federation* (Washington, D.C.: Georgetown University, Sept. 1996).

¹² *The American Bar Association/Central and Eastern European Law Initiative Evaluation, Georgia Country Report* (Washington, D.C.: Management Systems International, Jan. 1999).

¹³ *USAID/Armenia Rule of Law Assessment* (Washington, D.C.: Management Systems International, May 2000).

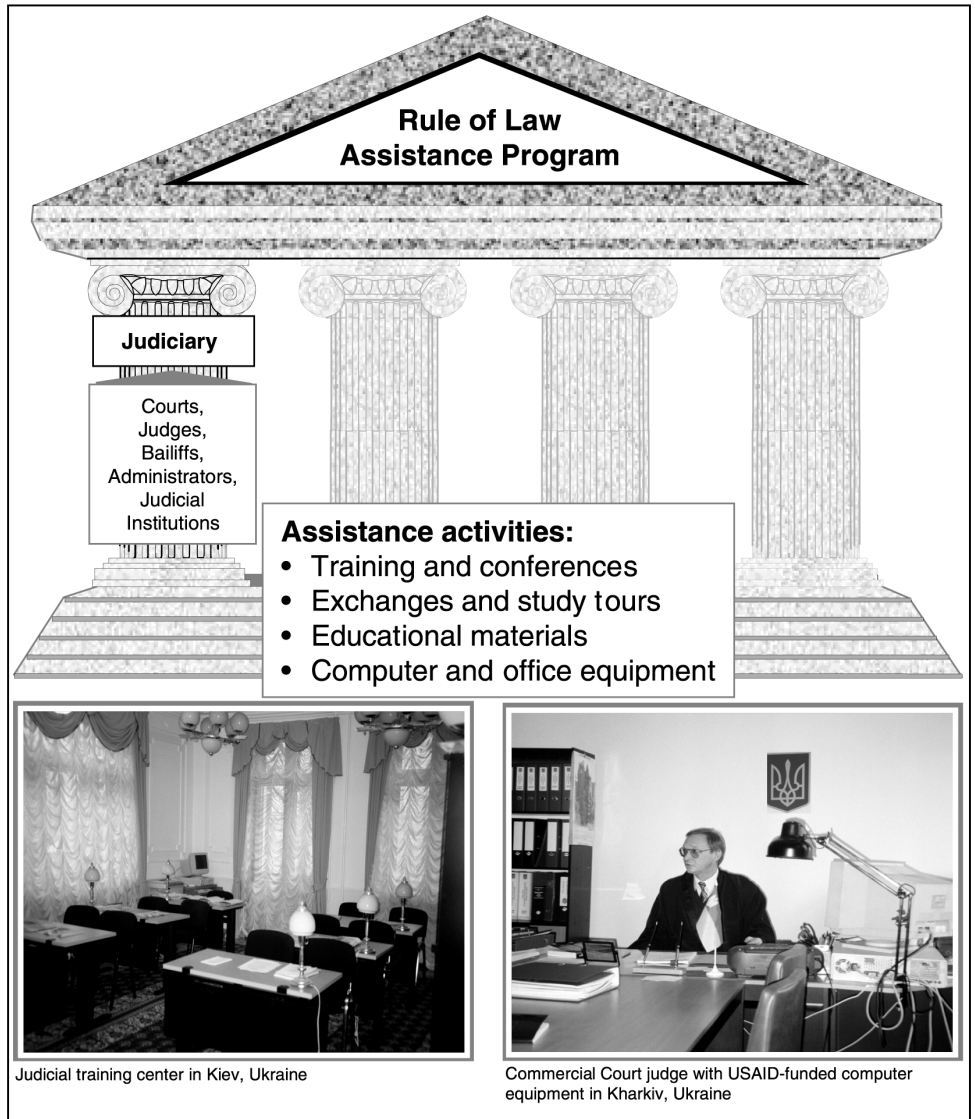
¹⁴ *The American Bar Association/Central and Eastern European Law Initiative Evaluation, Russia Country Report* (Washington, D.C.: Management Systems International, Jan. 1999).

Furthermore, a major project in Ukraine to establish sustainable mechanisms for developing reform-oriented legislation in the future has not yet been successful. One component of the USAID assistance program in Ukraine has been advancing parliamentary expertise and institutions to provide public policy analysis that will result in a more active, informed, and transparent parliament. However, according to U.S., foreign government, and private sector officials we interviewed, parliamentary committees are still weak, and parliamentary procedures for conducting hearings and related oversight activities have not been institutionalized. The vast majority of reforms still stem from the executive, which holds a disproportionate share of power and influence over the judicial and legislative branches of government.

Judiciary: Greater Independence Achieved in Some Respects, but Continued Reform and Retraining Needed

The second key element in the U.S. government's rule of law program has been to foster an independent judiciary with strong judicial institutions and well-trained judges and court officers who administer decisions fairly and efficiently. (See fig. 5 for activities under the judicial pillar of the rule of law assistance program.) The United States has contributed to greater independence and integrity of the judiciary by supporting key new judicial institutions and innovations in the administration of justice and by helping to train or retrain many judges and court officials. However, U.S. efforts we reviewed to help retool the judiciary have had limited impact so far. Judicial training programs have not yet been developed by the governments with adequate capacity to reach the huge numbers of judges and court officials who operate the judiciaries in these nations, and courts still lack full independence, efficiency, and effectiveness.

Figure 5: Judicial Pillar of U.S. Rule of Law Assistance Program



Source: GAO.

The United States has provided technical support and equipment to help establish and strengthen a variety of national judicial institutions. Though we could not verify the impact of this assistance on the effectiveness of their operations, representatives of the following institutions in Russia credit U.S. support for helping them enhance the independence and integrity of the judiciary.

-
- A Supreme Qualifying Collegium in Russia: With the help of training, information, and equipment provided by USAID, this institution, comprised solely of judges, is better equipped to oversee the qualification and discipline of judges, providing greater independence from political influence in court affairs.
 - Judicial Department of the Supreme Court in Russia: USAID provided training, educational materials, and other technical assistance to strengthen this new independent institution, created in 1998 to assume the administrative and financial responsibility for court management previously held by the Ministry of Justice.

The United States has also helped support the following innovations in the administration of the judiciary that appear to help increase the judiciary's integrity and independence.

- Qualifying examinations in Georgia: With extensive U.S. assistance by USAID contractors, an objective judicial qualifying examination system was introduced in 1998. This step has resulted in the replacement of some poorly qualified judges with certified ones. Georgia has repeated the exam several times with decreasing amounts of technical assistance from the United States.
- Jury trials in Russia: With training and educational material on trial advocacy, judges are now presiding over jury trials in 9 of Russia's 89 regions for the first time since 1917. Although the jury trial system has not expanded beyond a pilot phase, administration of criminal justice has been transformed in these regions—acquittals, unheard of during the Soviet era, are increasing under this system (up to 16.5 percent of all jury trials by the most recent count).

At a broader level, the United States has attempted to strengthen the integrity of the judiciary by supporting a variety of educational projects for legal professionals within the court system. In particular, USAID has sponsored training and conferences and has provided educational materials for judges, bailiffs, and administrators, raising their understanding of new and existing laws and improving their knowledge and skills in operating efficient and effective court systems. According to a major aid contractor, training on the bail law in Ukraine sponsored by the Department of Justice has increased awareness among courts of the alternatives to lengthy pretrial detention for criminal defendants. The United States has also helped develop manuals that provide practical information for judges and bailiffs on how to conduct their jobs. Historically, few books like these have been widely available, which has

seriously limited the development of professionalism in these legal careers. New teaching methods were introduced through U.S.-sponsored conferences. For example, according to training officials in the Russian Commercial Court, whereas conferences for their judges had traditionally been based mostly on lectures, U.S.-sponsored conferences stimulated discussions and were more interactive, included more probing questioning of the concepts presented, and provided a greater exchange of ideas. By all accounts, the information that the United States has provided on modern legal concepts and practices has been highly valued by its recipients.

However, efforts to foster sustainable new methods for training judges have had limited results, and the long-term viability of U.S.-sponsored improvements is questionable. In Ukraine, projects aimed at establishing modern judicial training centers have had very limited success. The two centers we visited that had been established with USAID assistance were functioning at far below capacity. One was only used for official judicial training for half a year and later for training classes financed by international donors. The other center had been dismantled, and the training equipment provided by USAID was dispersed to regional courts. In Russia, although training facilities have been in place for some time, their capacity for training judges is extremely limited. For example, with its current facilities, the Russian Court of General Jurisdiction can train each of its 15,000 judges only about once every 10 years. Plans for the development of a major new judicial training academy have not yet been implemented. Where training centers were already in place, some innovative training techniques introduced through U.S. assistance have not been institutionalized. For example, the training organizations we visited in Russia praised the new practical manuals developed with U.S. assistance, but they did not plan to print subsequent editions. Also, although videotape-based training had been piloted with U.S. assistance for the Russian Commercial Court to train judges in far-flung regions, no further videotaped courses have been produced by the court.

Despite progress in recent years, fully independent, efficient, and effective judiciaries have not yet been established. For example, according to a senior U.S. official responsible for Department of Justice programs in Russia, much of the former structure that enabled the Soviet government to control judges' decisions still exists, and Russians remain suspicious of the judiciary. Furthermore, according to the State Department's 1999 Human Rights Report, the courts are still subject to undue influence from the central and local governments and are burdened by large case backlogs and trial delays. Also, according to a 2000 USAID program

document, serious problems with the court system in Russia continue to include the lack of adequate funding, poor enforcement of court judgments, and negative public attitudes toward the judiciary.

In Ukraine, according to Freedom House, a U.S. research organization that tracks political developments around the world, and U.S. and Ukrainian officials and experts we interviewed, relatively little judicial reform has taken place, other than the adoption of a new constitution in 1996 and the establishment of a Constitutional Court for its interpretation. To a large extent, the ethos and practices of the Soviet political/legal system remain in the Ukrainian legal community, according to a 1999 USAID-sponsored assessment.¹⁵ The justice system, in which an estimated 70 percent of sitting judges in Ukraine were appointed during the Soviet era, continues to be marked by corruption and inefficiency and limited protection of criminal defendants' rights. Freedom House recently reported that the judiciary is not yet operating as an independent branch of government. Furthermore, according to Freedom House, local judges are subject to influence and requests for particular rulings from government officials who financially support court operations. According to the USAID-sponsored assessment, courts suffer from poor administrative procedures, which nurture corruption, inappropriate influence of judges, a lack of transparency, and waste. Moreover, the courts are unable to enforce their decisions, particularly in civil cases. This is a key constraint to the development of the rule of law in Ukraine, as it results in a loss of public confidence in the courts, according to the assessment report. Human rights advocates told us that legislated mandates for timely trials and set standards for prison conditions are often violated and result in extended detentions under poor conditions.

USAID documents we reviewed indicate that significant judicial reform is still needed in other countries as well. In Georgia, where the judicial reform process is perceived by USAID as being more advanced, most criminal trials continue to follow the Soviet model and, in many cases, prosecutors continue to wield disproportionate influence over outcomes, according to the State Department's Human Rights Report. Also, local human rights observers report widespread judicial incompetence and corruption, according to the report. In Armenia, State reports that although the judiciary is nominally independent, in practice courts are

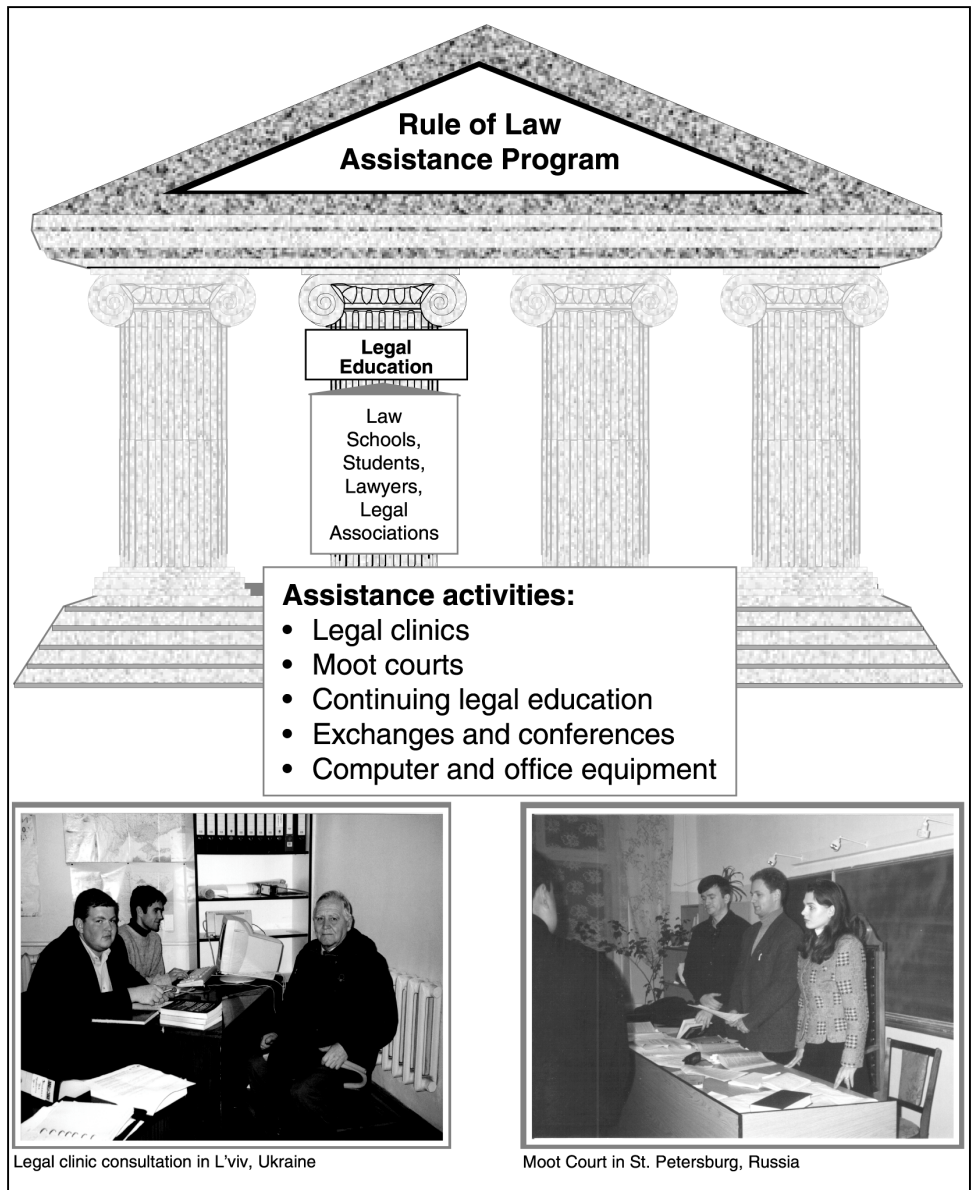
¹⁵ *Ukraine Rule of Law Assessment and Strategy Recommendations* (Washington D.C. : Management Systems International, 1999).

subject to pressure from the executive branch and to corruption, and prosecutors still greatly overshadow defense lawyers and judges during trials. According to USAID, a 1999 opinion poll showed that in Armenia only 20 percent of the population believe that court decisions are rendered fairly and in keeping with the law.

**Legal Education: More
Practical Methods
Introduced but Not Widely
Practiced**

The third element of the U.S. assistance program has been to modernize the system of legal education in the new independent states to make it more practical and relevant. (See fig. 6 for activities under the legal education pillar of the rule of law assistance program.) The United States has sponsored a variety of special efforts to introduce new legal educational methods and topics for both law students and existing lawyers. However, the impact and sustainability of these initiatives are in doubt, as indigenous institutions have not yet demonstrated the ability or inclination to support the efforts after U.S. and other donor funding has ceased.

Figure 6: Legal Education Pillar of U.S. Rule of Law Assistance Program



Sources: GAO, and moot court photograph from St. Petersburg Institute of Law.

The United States has provided some opportunities for law students and practicing lawyers to obtain useful new types of training. For instance, in an effort to supplement the traditionally theoretical approach to legal education in the new independent states of the former Soviet Union,

USAID has introduced legal clinics into several law schools throughout Russia and Ukraine. These clinics allow law students to get practical training in helping clients exercise their legal rights. They also provide a service to the community by facilitating access to the legal system by the poor and disadvantaged. With the training, encouragement, and financing provided by USAID, there are about 30 legal clinics in law schools in Russia and about 20 in Ukraine. USAID has also provided a great deal of continuing education for legal professionals, particularly in the emerging field of commercial law. This training was highly regarded by the participants, according to a 1999 USAID-sponsored evaluation of this project in Russia.¹⁶ Traditionally, little of this type of training was available to lawyers in the former Soviet Union.

USAID has included some design features in its projects intended to make them sustainable. Indigenous experts are increasingly used to provide the training as a way of making it more applicable in the local context and thus more sustainable, as trainers would remain in the country. Also, sustainability is enhanced by USAID's approach of training other trainers to perpetuate the teaching of trial advocacy skills and commercial law. According to the 1999 USAID-sponsored evaluation¹⁷ and an aid contractor we spoke to, materials on trial advocacy developed with U.S. assistance continue to be used in indigenous educational programs in Russia.

The United States, through long-term exchanges and partnership activities administered initially by the U.S. Information Agency and then by the Bureau of Educational and Cultural Affairs at the State Department, also brought young students, professionals, and faculty members to the United States to study U.S. law and legal education in depth. University partnerships also paired law schools in the United States and the new independent states to promote curriculum development and reform. We have observed some results from exchanges such as these: for example, the dean of the St. Petersburg State University Law School told us that his U.S.-funded visit to the United States inspired him to undertake major reforms at his institution, including the introduction of more practical teaching methods.

¹⁶ *The American Bar Association/Central and Eastern European Law Initiative Evaluation, Russia Country Report.*

¹⁷ *The American Bar Association/Central and Eastern European Law Initiative Evaluation, Russia Country Report.*

Despite the introduction of some positive innovations, however, U.S. assistance in this area has fallen far short of reforming legal education in the new independent states on a large scale. According to USAID-sponsored evaluations and project officials we spoke to, U.S. assistance has not been successful in stimulating reform in formerly Soviet law schools. Most law schools have not adopted the new, practice-oriented curricula that USAID has advocated and instead continue the traditional emphasis on legal theory. For example, in Ukraine, the emphasis in law school curricula continues to be on public rather than private law, and law students are taught little on subjects such as enterprises, contracts, real and personal property, consumer law, intellectual property, banking law, or commercial law. Also ignored are subjects relating to government regulation of businesses. As a result, students are not taught many skills important to the practice of law, including advocacy, interviewing, case investigation, negotiation techniques, and legal writing. In the area of using legal clinics to provide practical education, the impact of USAID assistance has been minor and sustainability is not yet secure. Due to the small number of faculty advisers willing to supervise the students' work, these clinics can only provide practical experience to a fraction of the law student population. While clinics appear to be increasing in popularity, not all universities routinely fund them or give course credit to participating students. In Ukraine, the United States has helped fund the establishment of a Ukrainian Law School Association to press for reforms in the Ukrainian legal education system, but this organization has remained relatively inactive, according to a major USAID contractor involved in this program. Also, a 2000 USAID-sponsored evaluation of rule of law projects in Armenia concluded that the considerable investment in that country's largest law school has not resulted in the intended upgrading and modernizing of curricula and teaching methodology.¹⁸

In the area of continuing legal education as well, it is unclear whether the new learning opportunities that the United States has been providing to legal professionals are sustainable over the long term. We could identify few organizations that routinely sponsor the types of training and conferences and print the published materials that the United States had initially provided. In Russia, a major aid contractor we met with involved in developing legal texts and manuals for USAID in Russia could not identify any organizations that were engaged in reprinting these publications without U.S. or other donor financing. The private Ukrainian

¹⁸ *USAID/Armenia Rule of Law Assessment.*

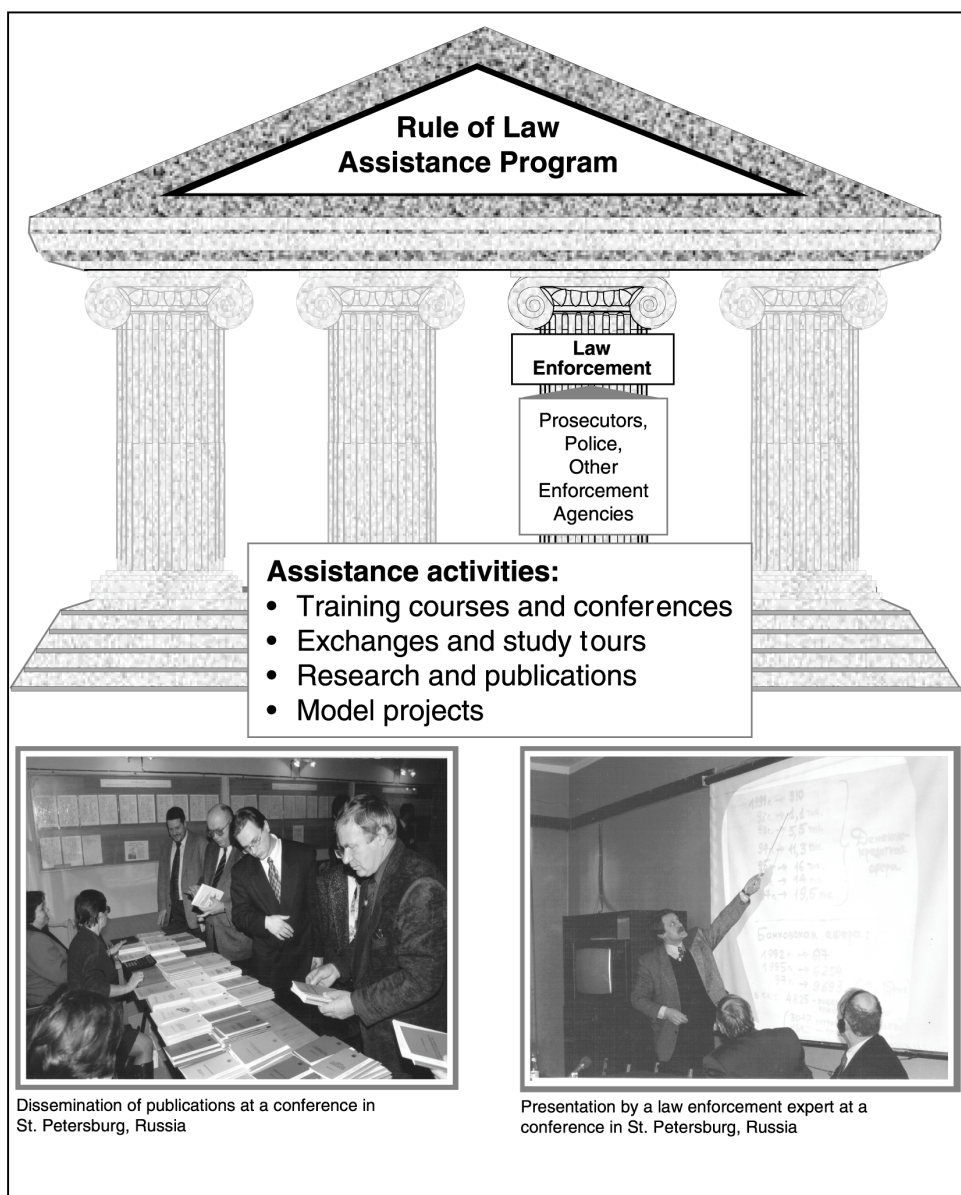
organization that has provided most of Ukraine's continuing legal education is dependent primarily on U.S. funding to operate. The United States has largely been unsuccessful at fostering the development of legal associations, such as bar associations, national judges associations, and law school associations, to carry on this educational work. U.S. officials had viewed the development of such associations as key to institutionalizing modern legal principles and practices and professional standards on a national scale as well as serving as conduits for continuing legal education for their members. But they have not become the active, influential institutions that the United States had hoped. In Armenia, according to a 2000 USAID-sponsored study,¹⁹ none of the nongovernmental organizations that had been supported by USAID were financially viable in carrying out their continuing legal education goals. Sustainability is "not in the picture for the immediate future," as the organizations were dependent on international donor assistance, according to the study.

**Law Enforcement:
Training, Models, and
Research
Provided, but Routine
Application Is Not Evident**

The fourth component of the U.S. government's rule of law program involves introducing modern criminal justice techniques to local law enforcement organizations. (See fig. 7 for activities under the law enforcement pillar of rule of law assistance programs.) As part of this effort, the United States has provided many training courses to law enforcement officials throughout the new independent states of the former Soviet Union, shared professional experiences through international exchanges and study tours, implemented several model law enforcement projects, and funded scholarly research into organized crime. These programs have fostered international cooperation among law enforcement officials, according to the Department of Justice. However, we found little evidence that the new information disseminated through these activities has been routinely applied in the practice of law enforcement in the new independent states. Thus the impact and sustainability of these projects are unclear.

¹⁹ *USAID/Armenia Rule of Law Assessment.*

Figure 7: Law Enforcement Pillar of U.S. Rule of Law Assistance Program



Sources: GAO, and photographs from St. Petersburg Procuracy Institute.

U.S. law enforcement agencies, such as the Federal Bureau of Investigation, the U.S. Customs Service, and the Drug Enforcement Administration, have sent dozens of teams of experts to train their

counterparts in the new independent states of the former Soviet Union on techniques for combating a wide variety of domestic and international crimes. The United States has also sponsored the attendance of their counterparts at U.S. training academies and the International Law Enforcement Academy in Budapest, Hungary. According to State and Justice, this training is intended not only to strengthen the law enforcement capabilities and, hence, the rule of law in these countries, but also to increase cooperation between law enforcement agencies in the United States and the new independent states in investigating and prosecuting transnational crimes.

U.S. law enforcement officials we spoke to have reported that, as a result of these training courses, there is a greater appreciation among Russians and Ukrainians of criminal legal issues for international crimes of great concern in the United States, such as organized crime, money laundering, and narcotics and human trafficking. They have also reported a greater willingness of law enforcement officials to work with their U.S. and other foreign counterparts on solving international crimes. According to a senior researcher conducting a State Department-funded study on the effects of law enforcement training, students participating in international police training funded in part by the U.S. government are significantly more willing to share information on criminal investigations with U.S. or other national law enforcement agencies than law enforcement officials that have not participated. Furthermore, according to Justice, there has been an increasing number of requests from the new independent states for bilateral law enforcement cooperation with the United States and a number of joint investigations of organized crime, kidnapping, and baby adoption scams.

However, the impact and sustainability of this training in building the law enforcement capabilities of the new independent states are unclear. We found little evidence in our discussions with senior law enforcement officials in Russia and Ukraine that U.S. techniques taught in these training courses were being routinely applied by their organizations. In some cases, training officials cited the use of U.S.-provided training materials by some instructors or as reference materials in their libraries, yet none identified a full-scale effort to replicate or adapt the training for routine application in their training institutions. Furthermore, we identified only two studies providing data on the application of U.S. law enforcement training, neither of which conclusively demonstrates that U.S. techniques have been widely embraced by training participants. According to a researcher we interviewed who has been evaluating U.S.-sponsored training programs under a grant from State, techniques taught at the

International Law Enforcement Academy, which is partially funded by State, have had limited application in day-to-day policing activities of participants. About 20 percent of training participants surveyed reported that they frequently use the techniques they learned in academy training courses in their work, according to his research.²⁰ According to an evaluation of U.S. law enforcement training conducted by the Russian Ministry of Internal Affairs, about 14 percent of Russian law enforcement officials surveyed indicated they have used the American experience introduced in this training in their practical work.²¹ According to Justice, this level of application of U.S. techniques suggests significant impact from U.S. training, and application and impact are likely to grow in time as the merit of these techniques become evident with use. However, due to limitations in the data available from these studies we were unable to validate or dispute Justice's assertions about the efficacy of this training.²²

The United States has funded several model law enforcement projects in Russia and Ukraine to help communities and law enforcement authorities establish community policing programs and to address the problems of domestic violence and human trafficking more effectively. Some of these projects appear to have had some impact in the local communities where they have been implemented. For example, according to the State Department, in one Russian city, the number of arrests for domestic violence has more than doubled in one year as a result of a U.S.-funded model project. However, such projects are still in the early stages of implementation, and we could not find evidence that the new practices introduced by the United States have yet been adopted on a wider scale in Russia or Ukraine.

Research on organized crime in Russia and Ukraine, sponsored by USAID and Justice, has provided some information that may potentially serve as a foundation for developing new methods for fighting this type of crime.

²⁰Training participants surveyed in this research include law enforcement officials from Central and Eastern European countries, including Croatia, Czech Republic, Hungary, and Romania as well as the new independent states of Russia, Ukraine, and Kazakhstan.

²¹*On the Results of Cooperation between the Russian [Ministry of Internal Affairs] MVD and the Law Enforcement Agencies of the United States of America in 1994-1999* (Russian Ministry of Internal Affairs: Moscow, Russia, 1999).

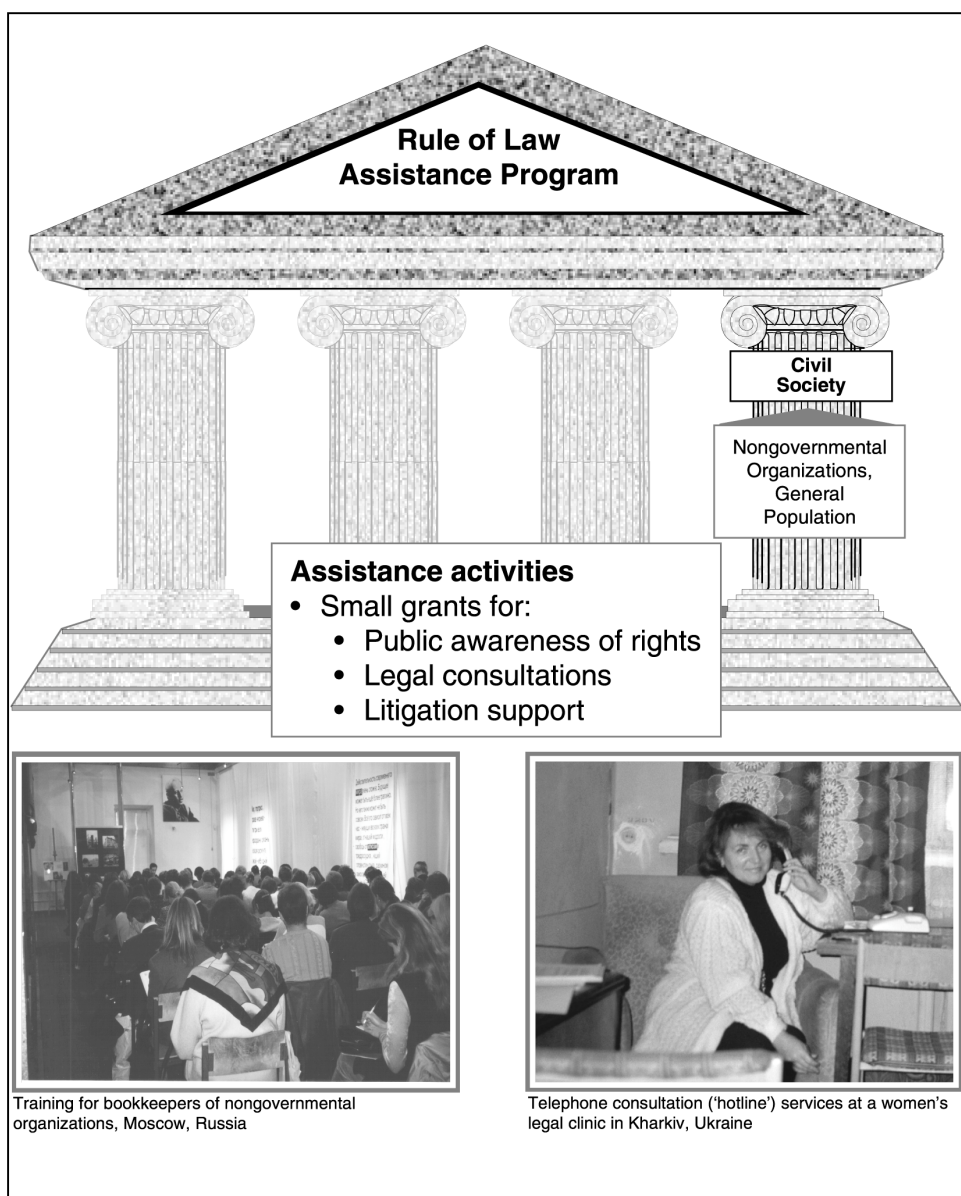
²²The State-sponsored study covered only a small portion of the U.S. law enforcement training conducted for the new independent states, and detailed survey response information, which would be necessary for more extensive analysis of the survey results, was not available for either study at the time of our review.

Officials at U.S.-funded research centers told us that their researchers helped develop a methodology for investigating and prosecuting corruption and organized crime that has been incorporated into some law school curricula. However, although project officials we spoke to asserted that the knowledge and analysis produced by the centers were being used, they could not determine how this research had actually been applied by law enforcement organizations in the new independent states. To date we found no evidence that these programs have led to sustainable and meaningful innovations in fighting organized crime in Russia and Ukraine.

Civil Society: Awareness and Involvement Have Increased, but Many Nongovernmental Organizations' Activities Depend on Continued International Donor Support

The fifth element of rule of law assistance program is the expansion of access by the general population to the system of justice. (See fig. 8 for activities conducted under the civil society pillar of the rule of law assistance program.) In both Russia and Ukraine, the United States has fostered the development of a number of nongovernmental organizations that have been active in promoting the interests of groups, increasing citizens' awareness of their legal rights, and helping poor and traditionally disadvantaged people gain access to the courts to resolve their problems. While these projects have contributed to a greater demand for justice, for the foreseeable future many will continue to rely on donor support, since they face difficulties in obtaining adequate funds domestically to continue operations.

Figure 8: Civil Society Pillar of U.S. Rule of Law Assistance Program



Source: GAO.

U.S. projects have led to greater access by citizens to the courts. The United States has supported a variety of organizations devoted to protecting the legal rights of many different segments of society, including

small business owners, the handicapped, victims of domestic violence, labor unions and individual workers, poor and displaced people, and homeowners and tenants. In Russia, the proliferation of such groups may have contributed, at least in small part, to the significant increase in the use of the courts—the number of civil cases in Russian courts increased by about 112 percent between 1993 and 1997, according to the statistics of the Russian Supreme Court. For example, in Russia, USAID has sponsored a project that has helped improve access to the legal system for trade unions and their members. According to the project manager, Russian lawyers supported by this project brought litigation in the Russian Constitutional and Supreme Courts on behalf of workers, which has led to changes to three national laws, bolstering the legal rights of millions of workers.

In addition, in Ukraine, private citizens are increasingly taking their disputes on environmental matters to the courts and prevailing in their causes with the help of USAID-funded organizations. At least three active environmental advocacy organizations have emerged with the sponsorship of USAID and other donors to provide legal advice and representation. Some of these organizations have brought important lawsuits on behalf of citizens, resulting in legal decisions with far-reaching legal implications. For example, a group of more than 100 residents in one local community obtained a judgment against the Ukrainian government for violating zoning laws on the location of a city dump and won demands that the dump be constructed at a different location in accordance with zoning laws, according to USAID.

Despite their high level of activity in recent years, these organizations still face questionable long-term viability. Most nongovernmental organizations we visited were dependent upon foreign donor contributions to operate. While some continued to function even after U.S. funding ceased, they often operated at a significantly reduced level of service. Some organizations received office space from the government, collected membership fees, and relied on the work of volunteers, but very few indicated that they received a large portion of their funding from domestic sources. Thus, sustainability of even some of the most accomplished organizations, such as the Ukrainian environmental advocacy organizations, remains to be seen. These organizations had been largely supported by USAID for several years and have only recently been forced to operate more independently. In Armenia, according to a 2000 USAID-sponsored evaluation, none of the nongovernmental organizations that had been supported by USAID were financially viable in carrying out their public awareness goals. The evaluation found that these organizations'

activities were not sustainable in the long term since they were dependent on international donor assistance.²³

Rule of Law Remains Elusive in the New Independent States

Despite nearly a decade of work to reform the systems of justice in the new independent states of the former Soviet Union, progress in establishing the rule of law in the region has been slow overall, and serious obstacles remain. As shown in table 2, according to Freedom House, the new independent states score poorly in the development of the rule of law, and, as a whole, are growing worse over time.²⁴ These data, among others, have been used by USAID and the State Department to measure the results of U.S. development assistance in this region.

²³ *USAID/Armenia Rule of Law Assessment.*

²⁴ These data are developed based on experts' answers to the following sets of questions or similar questions: (1) Is there a post-Communist constitution? (2) Does the constitutional framework provide for human rights, including business and property rights? (3) Has there been basic reform of the criminal code/criminal law? (4) Do most judges rule fairly and impartially? How many remain from the Communist era? (5) Are the courts free of political control and influence? Are the courts linked directly to the Ministry of Justice or any other executive body? (6) What proportion of lawyers are in private practice? (7) Does the state provide public defenders? (8) Has there been a comprehensive reform of antibias/discrimination laws, including protection of ethnic minorities?

Table 2: Rule of Law Ratings for the New Independent States, 1997-2000

Country	1997	1998	1999-2000	Trend
Armenia	4.75	5.00	5.00	Worse
Azerbaijan	5.50	5.50	5.50	No change
Belarus	6.00	6.25	6.50	Worse
Georgia	5.00	4.75	4.00	Better
Kazakhstan	5.00	5.25	5.50	Worse
Kyrgyzstan	4.50	4.50	5.00	Worse
Moldova	4.25	4.00	4.00	Better
Russia	4.00	4.25	4.25	Worse
Tajikistan	6.25	6.00	5.75	Better
Turkmenistan	6.75	6.75	6.75	No change
Ukraine	3.75	4.00	4.50	Worse
Uzbekistan	6.50	6.50	6.50	No change
Average for new independent states	5.19	5.23	5.27	Worse
Average for other post-Communist states	3.04	3.39	3.28	Worse

Note: Ratings are based on a scale from 1 to 7, with 1 as the best rating.

Source: Freedom House, *Nations in Transit* (Washington, D.C.: Freedom House, 1997, 1998, 1999-2000).

In the two new independent states where the United States has devoted the largest amount of rule of law funding—Russia and Ukraine—the rule of law is slightly better than average for the region, according to Freedom House scores. However, the scores show that the reform process remains slow and the rule of law, as defined by these indicators, has deteriorated in recent years. The scores have improved in only one of the four countries (Georgia) in which USAID has made the development of the rule of law one of its strategic objectives and the United States has devoted a large portion of its rule of law assistance funding.

Limits on Impact and Sustainability Stem From Political, Economic, and Program Management Issues

Three factors have constrained the impact and sustainability of U.S. rule of law assistance: (1) a limited political consensus on the need to reform law and institutions, (2) a shortage of domestic resources to finance many of the reforms on a large scale, and (3) a number of shortcomings in U.S. program management. The first two factors, in particular, have created a very challenging climate for U.S. programs to have major, long-term impact in these states, but have also underscored the importance of effective management of U.S. programs.

Political Consensus on Reform Slow in Forming

In key areas in need of legal reform, U.S. advocates have met some steep political resistance to change. In Ukraine and Russia, lawmakers have not been able to agree to pass critical legal codes upon which reform of the judiciary must be based. In particular, Ukrainian government officials are deadlocked on legislation reforming the judiciary, despite a provision in the country's constitution to do so by June 2001. Numerous versions of this legislation have been drafted by parties in the parliament, the executive branch, and the judiciary with various political and other agendas. Lack of progress for this legislation has stymied reforms throughout the justice system. In Russia's Duma (parliament), where the civil and the criminal codes were passed in the mid-1990s, the criminal procedure code remains in draft form. According to a senior Justice official, Russia is still using the autocratic 1963 version of the procedure code that violates fundamental human rights. This official told us that the Russian prosecutor's office is reluctant to support major reforms, since many would require that institution to relinquish a significant amount of the power it has had in the operation of the criminal justice system. While U.S. officials help Russian groups to lobby for legislative reforms in various ways, adoption of such reforms remain in the sovereign domain of the host country.

In the legal education system as well, resistance to institutional reform has thwarted U.S. assistance efforts. While some legal education officials we spoke with advocate more modern and practical teaching methods, legal education remains rigidly theoretical and outmoded by western standards. USAID officials in Russia told us that Russian law professors and other university officials are often the most conservative in the legal community and the slowest to reform. A USAID-sponsored assessment of legal education in Ukraine found that there was little likelihood for reform in the short term due to entrenched interests among the school administration and faculty who were resisting change.²⁵ Georgia also suffers from deeply seated barriers to legal education reform, such as systemic corruption in admissions and grading, according to the 1999 USAID-sponsored evaluation.²⁶

Furthermore, little consensus could be reached among legal professionals to overcome cultural, regional, and professional barriers to form effective

²⁵ *Ukraine Rule of Law Assessment and Strategy Recommendations.*

²⁶ *The American Bar Association/Central and Eastern European Law Initiative Evaluation, Georgia Country Report.*

national associations, according to U.S. officials and contractors we spoke with. For example, according to one law school dean we interviewed, efforts to establish a national law school association in Russia were met with resistance from state legal educational institutions in Moscow, which insisted on forming an alternative local association.

Policymakers have not reached political consensus on how or whether to address the legal impediments to the development of sustainable nongovernmental organizations. This would include passing laws that would make it easier for these organizations to raise domestic funds and thus gain independence from foreign donors. For example, in Ukraine, according to a 1999 USAID report²⁷ and Ukrainian officials we interviewed, the most important issues for nongovernmental organization development that need to be addressed by new legislation are granting nongovernmental organizations special tax status to enable them to raise funds for their activities and to provide tax incentives for private organizations or individuals to donate funds. Moreover, administrative acts by government agencies in Ukraine allow the government to decrease the scope of nongovernmental organizations, and some nongovernmental organizations, particularly those involved in citizen advocacy efforts, face numerous obstacles from tax authorities and other administrative agencies. In Russia, according to the USAID report, taxes are collected without distinguishing between nonprofit and profit-making enterprises, and legislation that promotes significant tax incentives is unlikely to be passed in the near future because of the government's critical need to raise revenues.

Weak Economic Conditions Make Funding Reforms Difficult

Historically slow economic growth in the new independent states has meant limited government budgets and low wages for legal professionals and thus limited resources available to fund new initiatives. While Russia has enjoyed a recent improvement in its public finances stemming largely from increases in the prices of energy exports, public funds in the new independent states have been constrained. Continuation or expansion of legal programs initially financed by the United States and other donors has not been provided for in government budgets, as illustrated by the following examples.

²⁷ *The 1999 NGO [nongovernmental organization] Sustainability Index* (Washington, D.C.: USAID, Jan. 2000).

In Ukraine, according to officials of the Supreme Court, the government could only afford to fund operations of the court's judicial training center for 6 months in the year 2000.

In the Russian Commercial Court, administrators explained to us that although the donated computer network funded by USAID was very helpful, the court did not have the funds to extend it to judges outside of the court's headquarters building in Moscow.

The system of jury trials in Russia could not be broadened beyond 9 initial regions, according to a senior judiciary official, because it was considered too expensive to administer in the other 89 regions.

According to a senior police official we spoke to in Ukraine, police forces often lack funds for equipment, such as vehicles, computers, and communications equipment, needed to implement some of the law enforcement techniques that were presented in the U.S.-sponsored training.

In addition, government ability or commitment to funding innovative new training and other improvements for the judiciary also appeared weak in Georgia, where the government has not been able to pay judges their promised salaries in a timely manner.

Nongovernmental organizations we visited said that it was difficult to raise funds from domestic sources to continue the advocacy, educational, and legal services programs that had initially been financed by the United States and other donors. For example, they indicated that while lawyers and other legal professionals valued the educational materials and opportunities offered through U.S. assistance, they generally could not afford to pay for the courses and materials privately.

Program Management Weaknesses Affect Impact and Sustainability of Aid

U.S. agencies implementing the rule of law assistance program have not always managed their projects with an explicit focus on achieving sustainable results. Our review of project documentation and our discussions with senior U.S. government officials indicate limited efforts were made to (1) develop and implement strategies to achieve sustainable results and (2) monitor projects results over time to ensure that sustainable impact was being achieved. These are important steps in

designing and implementing development assistance projects, according to guidance developed by USAID.²⁸

According to USAID guidance for planning assistance projects, project descriptions should define the strategies and processes necessary to achieve specific results, both in terms of immediate outputs and longer-term outcomes. We found that, in general, USAID projects were designed with strategies for achieving sustainability, including assistance activities intended to develop new and existing indigenous institutions to adopt the concepts and practices USAID was promoting. However, at the Departments of State, Justice, and the Treasury, rule of law projects we reviewed often did not establish specific strategies for achieving sustainable development results. In particular, the law enforcement-related training efforts we reviewed were generally focused on achieving short-term objectives, such as conducting training courses or providing equipment and educational materials; they did not include an explicit approach for meeting longer-term objectives, such as promoting sustainable institutional changes and reform of national law enforcement practices. According to senior U.S. embassy officials in Russia and Ukraine, these projects rarely included follow-up activities to help ensure that the concepts taught were being institutionalized or otherwise having long-term impact. For example, according to the U.S. Resident Legal Advisor in Russia, U.S. agencies' training efforts were intended to introduce new law enforcement techniques, but no effort was made to reform the law enforcement training curriculum so that the techniques would continue to be taught after the U.S. trainers left the country. Federal Bureau of Investigation officials we spoke to indicated that their training courses in the new independent states rarely took a "train the trainer" approach aimed at providing training that is likely to be replicated by indigenous law enforcement staff. One senior Justice official described the training as "lobbying" to convince key law enforcement officers of the importance or utility of the techniques being taught in hopes that they would someday be adopted.

USAID guidance also calls for establishing a system for monitoring and evaluating performance and for reporting and using performance

²⁸For more information, see "Results-Oriented Assistance: a USAID Sourcebook," available on the World Wide Web at www.usaid.gov. Although this guidance has not been formally adopted by other government agencies, it reflects the expertise of the U.S. government's most experienced development agency and is instructive to all agencies involved in development assistance.

information. Developing and monitoring performance indicators is important for making programmatic decisions and learning from past experience, according to USAID. However, we did not find clear evidence that U.S. agencies systematically monitor and evaluate the impact and sustainability of the projects they implemented under the rule of law assistance program.

We found that the Departments of State, Justice, and the Treasury have not routinely assessed the results of their rule of law projects. In particular, according to U.S. agency and embassy officials we spoke to, there was usually little monitoring or evaluation of the law enforcement training courses after they were conducted to determine their impact. U.S. law enforcement agencies that have implemented training programs report to State on each training course but do not assess the extent to which the techniques and concepts they taught have had a broader impact on law enforcement in the countries where they conduct training. To date, State has funded only one independent evaluation of the law enforcement training activities. According to Justice, it evaluates the course curriculum at the International Law Enforcement Academy on a regular basis to help ensure that it is relevant to its participants and of high quality. In addition, Justice conducts some indirect measurement of long-term effectiveness by discussing the usefulness of training with selected participants months or years after they have completed the course. However, these evaluations do not systematically assess the longer-term impact and sustainability of the training and do not cover a large portion of the training that Justice conducts.

Although USAID has a more extensive process for assessing its programs, we found that the results of its rule of law projects in the new independent states of the former Soviet Union were not always apparent. The results of most USAID projects we reviewed were reported in terms of project outputs instead of impact and sustainability. For 6 of the 11 major projects we reviewed in Russia and Ukraine, available project documentation indicated that project implementers reported project results almost exclusively in terms of outputs. These outputs include the number of USAID-sponsored conferences or training courses held, the number and types of publications produced with project funding, or the amount of computer and other equipment provided to courts. Short-term measures and indicators alone do not enable USAID to monitor and evaluate the sustainability and overall impact of the projects. Project documentation we reviewed, including work plans, progress reports, and post-completion reports, rarely addressed the longer-term impact of the assistance achieved or expected or indicated how impact could be measured into the

future. Other measures or indicators that capture the productivity of U.S.-assisted organizations or the extent to which U.S.-sponsored innovations are adopted in the country shed more light on the long-term impact and sustainability. Examples of such measures would be the percentage of judges or bailiffs that a government itself has trained annually using new methods introduced by U.S.-assistance or the percentage of law schools that sponsor legal clinics or include new practical courses in their curriculum. Although USAID has reported broad, national-level indicators for its rule of law programs, without indicators or measures of the results of its individual projects, it is difficult to draw connections between the outputs produced and the national-level outcomes reported. Furthermore, only 2 of the 11 USAID projects we reviewed in Russia and Ukraine have been independently evaluated to assess their impact and sustainability.

State has recently recognized the shortcomings of its training-oriented approach to law enforcement reforms. As a result, it has mandated a new approach for implementing agencies to focus more on sustainable projects. Instead of administering discrete training courses, for example, agencies and embassies will be expected to develop longer-term projects. Justice has also developed new guidelines for the planning and evaluation of some of its projects to better ensure that these projects are aimed at achieving concrete and sustainable results.²⁹ These reform initiatives are still in very early stages of implementation. It remains to be seen whether projects in the future will be more explicitly designed and carried out to achieve verifiably sustainable results. One factor that may delay the implementation of these new approaches is a significant backlog in training courses that State has already approved under this program. As of February 2001, about \$30 million in funding for fiscal years 1995 through 2000 has been obligated for law enforcement training that has not yet been conducted.³⁰ U.S. law enforcement agencies, principally the Departments of Justice and the Treasury, plan to continue to use these funds for a number of years to pay for their training activities, even though many of these activities have the same management weaknesses as the earlier ones we reviewed. Unless these funds are reprogrammed for other purposes or

²⁹These guidelines govern projects implemented by Justice's Criminal Division and do not extend to other agencies within the Department that implement law enforcement training, such as the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

³⁰The precise amount of funding is unclear, as State program officials believe that the implementing agencies may have actually conducted some unknown amount of this training but not yet submitted necessary documentation to State for reimbursement.

the projects are redesigned to reflect the program reforms that State and Justice are putting in place, their results may have limited impact and sustainability.

Conclusions

The U.S. government's rule of law assistance program is a key element of the U.S. foreign policy objectives of fostering democratic and open market systems in the new independent states of the former Soviet Union. However, establishing the rule of law is a complex and long-term undertaking. After nearly a decade of effort and more than \$200 million worth of assistance, the program has had difficulty fostering the sustainable institutions and traditions necessary to establish the rule of law in this region. Consequently, many of the elements of the Soviet-style legal system are still in place in the new independent states. Though this program was originally envisioned by the U.S. government as a short-term effort, achieving more significant progress is likely to take many more years. Progress is likely to remain elusive unless the new independent states make legal system reform a higher public policy and funding priority and U.S. agencies address the program management weaknesses we have identified in developing strategies for achieving impact and sustainability and conducting performance monitoring and evaluation. Although the United States has very limited influence over the political will and domestic resources of these countries, it could better design and implement its assistance projects, both those currently funded and those that it may fund in the future, with a greater emphasis on measuring impact and achieving sustainability.

Recommendations for Executive Action

To help improve the impact and sustainability of the U.S. rule of law assistance program in the new independent states of the former Soviet Union, we recommend that the Secretary of State, the Attorney General, the Secretary of the Treasury, and the USAID Administrator, who together control almost all of the program's funding, require that each new project funded under this program be designed with (1) specific strategies for achieving defined long-term outcomes that are sustainable beyond U.S. funding; and (2) a provision for monitoring and evaluating the project results, using verifiable outcome indicators and measures, to determine whether the desired outcomes have been achieved and are likely to be sustainable. Furthermore, to improve the likelihood that project funds currently budgeted but not yet spent achieve sustainable results, the Secretary of State, the Attorney General, and the Secretary of the Treasury should jointly review the pipeline of projects and develop a plan for

ensuring that all projects meet the above criteria, including reprogramming of unspent assistance funds, as necessary.

Agency Comments and Our Evaluation

We received written comments on a draft of this report from USAID and the Departments of State and Justice, which are reprinted in appendixes II-IV. The Department of the Treasury had no comment on the report.

State, Justice, and USAID generally agreed with us that the program management improvements we recommended are needed. State indicated that it had already begun to undertake management actions consistent with these recommendations. State also suggested that we encourage the U.S. law enforcement agencies to cooperate in its ongoing efforts to reprogram or reschedule assistance funds that have been budgeted but not yet spent. Justice agreed that improved planning and evaluation of its assistance activities are needed. USAID agreed that improvement is needed in measuring project results and that greater emphasis could be given to reviewing long-term sustainability issues. We have modified our recommendation to emphasize the importance of cooperation among the agencies in resolving management weaknesses we identified.

USAID and State expressed concern that our assessment set too high a standard for program success. These agencies noted that we did not adequately recognize the complex and long-term nature of this development process. They also noted that the funding for rule of law development has been relatively meager compared to the total amount of assistance provided to the new independent states and considering the magnitude of the challenge. Furthermore, the agencies stated that achievement of a fully functioning rule of law system could not have been expected in the 8 years that the program has been in existence. We agree that establishing the rule of law in the new independent states is a complex and long-term undertaking, and we have made this observation more prominent in the report. We did not use the full development of a rule of law system as the benchmark of success for this program, however. Instead we looked for sustainable progress in each of the key elements of the U.S. assistance program as well as in the overall development of the rule of law. We found limited sustainable impact from U.S.-funded projects in the various elements of the program that we reviewed. Furthermore, we found that by the one measure, the Freedom House rule of law score, which USAID and State used to measure overall rule of law development, the situation in the new independent states is relatively poor and has actually been deteriorating in some states. We do not agree that the

program funding levels were necessarily a significant factor limiting the impact and sustainability of the program; rather, we believe that better results could have been achieved with a more conducive political and economic environment and with better planning and monitoring efforts.

The agencies also indicated that we did not adequately recognize some significant program activities and achievements. These include the development of a more independent judiciary in Russia and adoption of a number of reforms in the criminal justice system. USAID also stated that its encouragement and support of legal system reforms have been a valuable accomplishment, though not always resulting in the creation of a sustainable entity to promote reforms into the future. In addition, Justice stated that its training courses have been more successful than we have given them credit for, both by helping to establish valuable working relationships between law enforcement agencies in the United States and the new independent states and by fostering the application of modern law enforcement techniques. Hence, Justice indicated that our assessment was overly pessimistic about the prospects for achieving sustainable results from its programs. State indicated that we failed to acknowledge a major educational exchange component of the program. Where appropriate, we included additional information or amplified existing information on program results and activities. In most cases, however, our analysis showed that there was insufficient evidence to draw a link between the outcomes the agencies cited and U.S. assistance efforts.

USAID and Justice indicated that we did not adequately acknowledge the monitoring and evaluation systems that they currently employ in this program. USAID indicated that while it agrees that a better project-level results measurement is needed, it currently employs a system of program monitoring that allows it to manage the program effectively. Justice pointed to training curriculum evaluation that it undertakes to help ensure that its training programs are relevant and useful. We reviewed the information that both provided and have included additional information about them in our report. However, we believe that none of the agencies employed a monitoring and evaluation process to systematically assess the direct impact of its rule of law projects in the new independent states of the former Soviet Union and measure progress toward the projects' long-term objectives and desired outcomes.

State and USAID expressed concern that we did not rank the three factors that have limited the impact and sustainability of the program in order of importance. They believe that program management weaknesses are the least important factor and the lack of political consensus is the most

important. Furthermore, USAID stated that any limitations in the effectiveness of the rule of law assistance program should not be attributed to its monitoring and evaluation shortcomings. We agree that the political and economic conditions in this region have created a difficult environment for U.S. assistance efforts and have revised the report to emphasize this point. However, we believe that improved management practices could enhance the impact and sustainability of the program, and we discuss program management weaknesses in detail in the report because the U.S. government has more control over this factor than the other two. Furthermore, insofar as project results are not routinely monitored and evaluated, the agencies' ability to manage for results is impaired.

As arranged with your office, we plan no further distribution of this report for 30 days from the date of the report unless you publicly announce its contents earlier. At that time, we will send copies to interested congressional Committees and to the Honorable Colin Powell, Secretary of State; the Honorable Paul O'Neill, Secretary of the Treasury; the Honorable John Ashcroft, Attorney General; the Honorable Donald Pressley, Acting Administrator, U.S. Agency for International Development; and other interested parties. We will make copies available to others upon request.

If you or your staff have any questions about this report, please contact me on (202) 512-4128. Other GAO contacts and staff acknowledgments are listed in appendix V.

A handwritten signature in black ink, reading "Jess T. Ford". The signature is fluid and cursive, with the first name "Jess" and last name "Ford" clearly legible.

Jess T. Ford, Director
International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

To (1) assess the impact and sustainability of the U.S. government's rule of law program and to (2) identify factors that constrained impact and sustainability, we analyzed project documentation, interviewed knowledgeable officials, and reviewed assistance activities in the field. We obtained and analyzed information on the results of the U.S. rule of law assistance efforts funded between 1992 and 2000 in the new independent states of the former Soviet Union. However, we focused our review on four specific countries—Armenia, Georgia, Russia, and Ukraine. We selected these countries because they received the bulk of U.S. assistance, because the U.S. Agency for International Development (USAID) had designated rule of law development as a strategic objective in these countries, and because significantly more relevant information was readily available about the assistance activities in these countries than the other eight new independent states. Furthermore, based on our discussions with USAID and State staff and our review of relevant documentation, we concluded that the U.S. rule of law assistance efforts in these countries were typical of the assistance provided throughout the region. Thus, we believe that our report findings about the impact and sustainability of the U.S. assistance program are applicable to the entire region.

To obtain detailed information on the impact and sustainability of specific rule of law assistance efforts, we examined projects funded in Russia and Ukraine since 1995, including 11 major USAID-managed projects and a variety of assistance activities managed by State. We selected these countries based on congressional interest and because they have received at least about half of the assistance provided under this program. We selected these projects because they were the most likely to have been substantially completed and thus have a track record that would allow us to assess whether they have begun to achieve significant results. We did not include projects initiated in 1999 or thereafter.

Specifically, we conducted the following work.

In Washington, D. C., we interviewed headquarters officials at the departments and agencies implementing rule of law projects in these new independent states, including the Departments of State, Justice, and the Treasury, and the U.S. Agency for International Development. We also met with individuals with expertise in criminal justice system reforms. For Russia and Ukraine, we reviewed Mission Performance Plans; USAID country planning documents; Department of Justice country work plans; and other reporting documents, funding agreements, contracts, and project evaluations. We obtained program funding information for fiscal years 1999 and 2000 from USAID and the Departments of State, Justice,

and the Treasury, which we combined and analyzed with similar information we had obtained for earlier fiscal years in the course of previous work.

We conducted fieldwork in Russia and Ukraine in August and October 2000. In each of these countries, we met with the Deputy Chief of Mission, senior U.S. officials representing agencies with rule of law programs in each country; and numerous program staff, including contractors responsible for implementing the projects. We interviewed host country officials at the supreme, constitutional, general jurisdiction, and commercial courts; justice and interior ministries; law enforcement organizations; and the Judicial Department in Russia. We visited training schools for judges and prosecutors, law schools, and several demonstration projects. We also met with numerous representatives from nongovernmental organizations and other groups representing a broad spectrum of civil society in Moscow, St. Petersburg, Petrozavodsk, and Yekaterinburg in Russia; and in Kiev, Lviv, and Kharkiv in Ukraine.

Though we did not travel to the 10 other new independent states of the former Soviet Union or review specific projects in these states in depth, we obtained and reviewed all available evaluations of these projects to determine whether they have met their major objectives and to identify the factors affecting their success or failure. We also reviewed our prior reports on rule of law assistance, and reports on foreign assistance to Russia and Ukraine.³¹

³¹See *Foreign Assistance: International Efforts to Aid Russia's Transition Have Had Mixed Results* (GAO-01-8, Nov. 1, 2000); *Foreign Assistance: U.S. Rule of Law Assistance to Five Latin American Countries* (GAO/NSIAD-99-195, Aug. 4, 1999); *Foreign Assistance: Rule of Law Funding Worldwide for Fiscal Years 1993-1998* (GAO/NSIAD-99-158, June 30, 1999); *Foreign Assistance: Harvard Institute for International Development's Work in Russia and Ukraine* (GAO/NSAID-97-27, Nov. 27, 1996); and *Promoting Democracy: Progress Report on U.S. Democratic Development Assistance to Russia* (GAO/NSIAD-96-40, Feb. 29, 1996).

Rule of law is a component of democracy building, and although a close relationship exists between activities, we did not evaluate other projects under the democracy program.

We performed our work from July through December 2000 in accordance with generally accepted government auditing standards.

Appendix II: Comments From the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

March 16, 2001

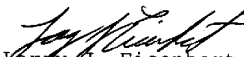
Dear Ms. Westin:

We appreciate the opportunity to review your draft report, "FORMER SOVIET UNION: U.S. Rule of Law Assistance Has Had Limited Impact and Sustainability," GAO-01-354, GAO Job Code 711540.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Lorraine Predham Keir, Director, Democratic Initiatives, Office of the Coordinator for U.S. Assistance to the NIS, who can be reached on (202) 647-4337.

Sincerely,


Larry J. Eisenhart
Acting

Enclosure:

As stated.

cc: OIG - Ms. Cook
GAO/IAT - Mr. Ford
State/S/NIS/C - Ms. Keir

Ms. Susan S. Westin,
Managing Director,
International Affairs and Trade,
U.S. General Accounting Office.

**“FORMER SOVIET UNION: U.S. Rule of Law Assistance Has Had Limited Impact and
Sustainability”**

GAO-01-354, GAO Job Code 711540

The State Department appreciates the opportunity to comment on this draft GAO report. The GAO is correct in identifying the difficult and sometimes worsening political and economic conditions in Russia, Ukraine, Georgia and Armenia as obstacles to effective implementation of Rule of Law (ROL) programs during this period. Assisting these countries in developing ROL institutions, practices and cultures will clearly be more difficult and take more time than imagined when the U.S. and other international donors first embarked on this endeavor. We believe that we and the recipient countries now have a deeper appreciation of what will be required and the strategies that will most likely lead to success.

We have seen some progress. Slowly, the states are enacting anti-corruption and anti-crime legislation. The incidence of some types of crime has moderated, particularly in Russia. Further progress depends upon the willingness and ability of the NIS to pass fundamental legislation to form the basis of a rule-of-law society; increase transparency and competition in the economy; strengthen implementation and enforcement mechanisms; and establish regulatory and oversight mechanisms that allow for efficient investigation and prosecution of crime and corruption.

We offer the following observations about the report's premise and conclusions.

While the report identifies several key factors that contribute to the impact and sustainability of rule of law programs in the NIS, it measures the effectiveness of U.S. Government (USG) efforts by an extraordinarily high standard - a fully functioning and well-funded rule of law system. It is worth noting that eight years is a short time frame in which to transform 12 different societies that have never experienced the rule of law. The amount of money the USG has spent is also a drop in the bucket compared to the considerable needs and could not, even under the best of circumstances, have brought about the rule of law so quickly.

The report appears to stress equally three conditions identified as contributing to a lack of progress: lack of a political consensus on reform, weak economic conditions that limit government funding, and program management shortcomings. While each factor is valid, we would weight most heavily the lack of political will evidenced by NIS governments to give up the control necessary to govern under the rule of law. Where elected leaders have shown the necessary commitment, reforms have progressed more quickly than in neighboring countries where elected leaders continue to manipulate the law enforcement and judicial systems to suppress opposition. The issue of available resources in many cases is also directly linked to government willingness to commit resources - with recent economic growth, a few NIS countries have the means to pay for some of these reforms but simply choose not to.

As noted in the report, based on lessons learned in the 1995-1998 period, the Department of State's Bureau of International Narcotics and Law Enforcement Affairs (State/INL) has developed and begun implementing comprehensive, multidisciplinary, interagency law enforcement projects in lieu of simply offering training courses in isolation. Sustainability and measures of effectiveness have been integral parts of the project design process. We are confident that this new project-based approach is consistent with GAO recommendations, and will result in more effective and sustainable programs.

See comment 1.

We would also like to underscore that State/INL is working with U.S. law enforcement agencies to resolve the issue referred to in the GAO report (page 29) regarding the \$33 million in courses and technical assistance either undelivered or as yet unexpensed by recipient agencies. Those courses not yet delivered will, of course, be fully integrated into INL's comprehensive projects. Under INL leadership, law enforcement agencies have also taken steps to redirect funds previously programmed for training and equipment to meet current needs identified as priorities by the embassy – for example corruption, a new forensics lab and prison reform in Georgia. S/NIS/C plans to work closely with INL to monitor the disbursement of these funds and to try to speed up the billing time from recipient agencies once courses are completed. We understand that Washington often does not receive a full accounting of training-related expenditures until a year after the training has taken place. State/INL encourages the GAO to include in its recommendations that the U.S. law enforcement agencies should cooperate with State/INL in its ongoing effort to reschedule and/or reprogram undelivered assistance to complement the newly designed projects.

See comment 2.

The report fails to examine the long-term exchanges and partnership activities administered initially by USIA and now by the Bureau of Educational and Cultural Affairs at the Department of State. In FY-99 and FY-00, the USG spent \$4.2 million on these activities, which bring young students, professionals, and faculty members to the U.S. to study law and legal education in depth. University partnerships pair U.S. and NIS law schools to promote curriculum development and reform. The GAO team acknowledges that they did not meet with Public Affairs Officers in the countries they visited. While we understand that given the broad scope of the review the GAO could not include every activity, we believe this is a significant omission.

See comment 3.

The report paints a bleak picture of an NGO sector entirely dependent on western funding. In fact, many NGOs were founded without USG funding and continue to operate on a shoestring – frequently out of a room in someone's apartment, with dedicated volunteer labor. In Russia alone there are 65,000 NGOs; USAID has provided support to only 15 percent of them. The other 85 percent operate without USG assistance. As economies in the region improve we are hopeful that businesses will contribute more extensively to the NGO sector. This is already happening to a small extent in Russia, and if the Russian government changes the tax code to include incentives for businesses to donate to non-profit entities, we predict the trend will expand further still. Again, the key factor is policy choices and political decisions to be made by NIS governments, something over which we have no direct control.

The report chides the USG for not putting in place effective monitoring and evaluation systems, yet it also cites conclusions of several USG-funded studies. We recognize that some implementers have evaluated their efforts more often than others have and plan to encourage all recipients of FSA funds to undertake more systematic and thorough evaluations.

Finally, we would note an important lesson learned in implementing rule-of-law and law-enforcement programs: the need for better coordination in the field. U.S. embassies in the NIS have now established working groups to coordinate law enforcement efforts, usually chaired by the DCM and composed of representatives of all agencies working in the field. These law enforcement working groups now set the priorities for training, equipment and technical assistance, and request resources from the Department to implement these goals. We believe that field-directed management of these programs is the best approach to insuring that the work of different agencies all contributes to mission goals and that host governments have a single local point of contact with which to work.

GAO Comments

The following are GAO's comments on the Department of State's letter dated March 16, 2001.

1. State indicated that it is working with law enforcement agencies to ensure that the pipeline of law enforcement training funds are used to achieve the maximum impact and sustainability. State suggested that we recommend that the U.S. law enforcement agencies cooperate with State in its ongoing efforts to reschedule or reprogram undelivered assistance. Based on our discussions with State officials, increased and continued attention and cooperation among the agencies will be needed before this issue is fully resolved. As suggested by State, we have highlighted the need for this interagency cooperation in our recommendation to the agencies.
2. State pointed out that our report failed to address the long-term exchange and partnership activities of the U.S. Information Agency and its successor, State's Bureau of Educational and Cultural Affairs. We inadvertently omitted the financial data provided by State on these exchanges from our initial calculation of program funding, but we did include the exchanges in the scope of our review, insofar as time and resources allowed and as results were observable. We have revised the financial data to include the data on exchanges and also included specific mention of these exchanges in our discussion of the legal education element of the Rule of Law Assistance Program.
3. State noted that the community of nongovernmental agencies in the region was not as dependent on western funding as our report suggested, as evidenced by the large number of such organizations that receive no U.S. funding. The observations in our report did not pertain to the development of nongovernmental organizations overall. We noted questionable sustainability among those nongovernmental organizations in the rule of law field that have received a significant amount of U.S. funding under this program.

Appendix III: Comments From the Department of Justice

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. Department of Justice

Washington, D.C. 20530

MAR 23 2001

Mr. Jess T. Ford
Director
International Affairs and Trade
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Ford:

On February 15, 2001, you provided the Department of Justice (DOJ) copies of a General Accounting Office (GAO) draft report entitled "FORMER SOVIET UNION: U.S. Rule of Law Assistance Has Had Limited Impact and Sustainability." The draft report examines the assistance the United States Government has provided to the Newly Independent States (NIS) to develop legal systems based on rule of law principles. The DOJ generally agrees with the thrust of the GAO report and accepts its opinion that the programs require greater planning and evaluation. However, we believe that the report is unduly pessimistic in its analysis of the value of, and prospects for these programs, given the program goals and objectives, funding, and the progress that has been made.

PROGRAM GOALS AND PROGRESS--DEVELOPMENT PROGRAMS

Federal departments and agencies have received \$193 million over eight years to reform the legal systems of twelve cash-strapped countries. The DOJ's programs focus on criminal justice reform and training in the NIS. Most of the NIS countries have included fundamental laws and protections in their constitutions, and DOJ efforts have focused upon the development of laws, procedures, and institutions that will fully implement these rights and protections, or on training of law enforcement professionals.

The goals and strategy of DOJ's development effort in Russia and the NIS have always been clear. From the programs' inception, the goals have been: to establish a partnership between the United States and Russian Governments to promote the rule of law in Russia; to help develop democratic Russian legal institutions; and to enhance the ability of Russian law enforcement to effectively investigate and prosecute crime, while adhering to recognized principles for the protection of human rights. There

Mr. Jess T. Ford

2

has been significant progress toward meeting these goals in the intervening years but the goals have not yet been fully achieved.

Some very basic reforms have in fact taken root in the NIS. For example, the Russian courts have adopted the concept of constitutional review, which has allowed the courts to question government policies in a number of areas, including the death penalty, expansion of the jury trial, and discrimination against foreigners. The new Russian Bailiff System is modeled after the United States Marshals Service (USMS). The first use of abbreviated trial procedures was adopted in the recently enacted Magistrates Law in Russia. Bail laws have been adopted both in Ukraine and Russia. Likewise, a practice that has been the subject of much DOJ training--use of Mutual Legal Assistance Agreements and other forms of bilateral law enforcement cooperation--is becoming much more common in the NIS: so much so, that DOJ is swamped with the backlog of pending requests from Russia.

DOJ provided technical assistance, advice and encouragement in the drafting and passage of Russia's new criminal code, which is based on democratic principles and is a significant step in the creation of a rule of law state in Russia. This code, among other improvements, eliminated the Soviet laws against economic activity, free speech and political dissent. As the GAO report states, the Russians have not yet passed a comprehensive new code of criminal procedure. But there have been significant amendments to the existing code, including, for instance, requiring that wiretaps be authorized by a court, elimination of lay jurors (who were viewed as yes men for the government) in felony bench trials, and enforcement of the right against self-incrimination.

BENEFITS OF THE TRAINING PROGRAMS

The GAO evaluates the benefits of training programs based on the extent to which the techniques and concepts taught have been applied in law enforcement officers' day-to-day activities. While this measure may be consistent with the long-term goals of developmental rule of law programs, it fails to consider other valid benefits to and objectives of the various training providers. Besides the very important goal of strengthening the rule of law, DOJ and other law enforcement training is also geared at increasing cooperation between NIS and United States law enforcement in investigating and prosecuting transnational crimes. Thus, we believe the report should acknowledge other benefits and objectives: 1) addressing global crime that affects the United States and its citizens; 2) building professional relationships that assist United States agencies in their efforts to more effectively secure investigative assistance; and 3) improving relationships among participating countries.

Mr. Jess T. Ford

3

Many examples of these benefits are already manifest. The collapse of the Soviet Union and the subsequent tide of emigration from the NIS resulted in a substantial increase in Russian organized crime activity throughout the world. To combat this growing phenomenon of Russian organized crime in the United States and Russia, DOJ assigned two prosecutors in Russia in 1995. In addition, the training at the International Law Enforcement Academy (ILEA) in Budapest has led to improved working relationships among participating countries. For example, cooperation between the United States and foreign officers resulted in the arrest of several members of an organized crime group because the foreign officers were able to recognize and decipher codes used by organized crime groups and known only to a few people outside of the country of origin. Further, United States efforts with various NIS countries have led to investigations of organized crime, kidnaping, and baby adoption scams. More generally, cooperation derived from ILEA training has resulted in 1) identifying transnational crime trends and developing and prosecuting criminal cases; 2) enhanced collection and sharing of intelligence data; and 3) conclusion of mutual legal assistance treaties and extradition treaties. Finally, cooperation between nations has increased: 1) the Czech Republic and Poland jointly investigated auto theft; 2) Ukraine and Hungary established a close working relationship on the border that led to the apprehension of members of organized crime, and 3) Hungary and Romania executed various law enforcement memorandum of understanding that formed the foundation for treaties between the countries regarding human rights and minority issues.

See comment.

We also note that the GAO's evaluation of the programs' success relies on two studies of the everyday usefulness of training for its participants. One report found that only 20 percent of training participants surveyed reported that they frequently use the techniques they learned in academy training courses in their work; while the other, conducted by the Russian Ministry of Internal Affairs, reported about 14 percent of Russian law enforcement officials surveyed indicate they have used the American experience introduced in this training in their practical work. Based in part on these studies, the GAO report concluded that the programs have had limited applicability.

See comment.

We agree that every training program must be refined to be of direct and practical use to law enforcement officials in their current as well as future operations. The DOJ law enforcement component trainers (Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and USMS) and the institutional development sections, Office of Overseas Prosecutorial Development, Assistance, and Training (prosecutorial institutions) and International Criminal Investigation Training Assistance Program (police and criminal

Mr. Jess T. Ford

4

See comment.

investigative institutions,) continually strive to find a balance between teaching skills and techniques that are immediately useful and those which are part of a broader program of law reform and long-term strengthening of law enforcement. Thus, surveys that suggest that not all of the training that has been provided can be immediately and "frequently" utilized, even if accurate, do not provide a complete picture of the efficacy of that training. Any particular training course may convey a variety of approaches and techniques. Have participants used some of the techniques "frequently," other techniques "sometimes" and still others not at all? Such an outcome would not be surprising, particularly when the trainers have not been funded to implement the training. When United States law enforcement personnel receive training, they presumably return to an environment where that training is re-enforced by senior officers and management personnel who had earlier received similar training. This is not the case among law enforcement entities in the NIS, and even the best training may not be fully implemented.

Moreover, even straight training courses are designed in part to expose foreign law enforcement personnel, including managers and policy makers, to a variety of techniques and approaches. Ultimately, the decisions as to which techniques to adopt are made by those higher level individuals for a variety of reasons, many of which have little to do with the quality of the training. To avoid this disconnect, one cannot over estimate the importance of close cooperation between the DOJ and Treasury implementers of assistance and the indigenous recipients of that assistance, beginning at the initial planning stages of any such assistance programs and carrying through to evaluation of the programs and development of lessons learned.

See comment.

Thus, one can see that measuring a full assistance program or single training program's impact is a complex task. Nevertheless, there is considerable evidence that these programs have been successful. In the 10 years since the breakup of the Soviet Union, Russia and Ukraine are beginning to adopt American law enforcement techniques. If one out of every five participants is already using American procedures "frequently," then this training is having significant impact. As techniques are used and validated, their use will grow, and the cumulative effects across several years will begin to show. Finally, by showing techniques and allowing partner law enforcement officials to choose and adopt or adapt what is useful, the result is a net improvement not only to strict law enforcement, but also to strengthening relationships between professional, law enforcement agencies and nations, which promotes cooperative and joint efforts in fighting transnational crime.

Mr. Jess T. Ford

5

PROGRAM MONITORING, EVALUATION, AND TARGETING

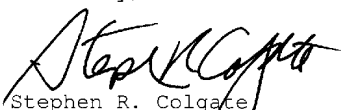
The GAO may not have considered all of the short- and long-term evaluations that are being conducted by participating agencies, nor the efforts these agencies make to target or refocus their training to meet participant needs. In fact a major purpose of these evaluations is to ensure that the courses provided are relevant and useful to the trainees. For example, the ILEA curriculum is dynamic and must respond to changing needs and circumstances. Evaluation information is used to help identify needed curriculum changes. We have provided separately detailed information on processes coordinated by the University of Virginia and the International Curriculum Committee to evaluate ILEA programs.

CONCLUSION

When the Soviet Union collapsed there was much discussion and debate in the United States as to whether a new "Marshall Plan" for the former communist states of Europe should be implemented. This idea was rejected and a more modest plan was implemented. Specifically, it was assumed that United States assistance would prime the pump of reform and the individual countries would follow through with implementation. Implicit in this strategy was the assumption that the governments would exhibit the political will to undertake needed reforms and that the market economies would quickly develop in the region, allowing governments to fund these reforms. In fact, the economies of this region are still struggling with the constraints imposed by the legacies of their former communist economies, the funds needed to follow through with these reforms have never materialized, and entrenched political attitudes have slowed the movement toward reform. The report recognizes these factors and concedes that they are factors over which we have no control. We nevertheless continue to be optimistic about the NIS countries' prospects and anticipate that a continuing contribution to the changes that are occurring in this region will eventually result in sustainable rule of law systems.

We hope the comments will be beneficial in completing the final report. If you have any questions concerning the Department's comments, you may contact me.

Sincerely,


Stephen R. Colgate
Assistant Attorney General
for Administration

GAO Comment

The following is GAO's comment on the Department of Justice's letter dated March 23, 2001.

Justice disagreed with our characterization of the extent to which law enforcement techniques taught in U.S.-sponsored training courses were being applied by training recipients. Justice stated that the data we cited supported the conclusion that its training has had significant impact and that greater application is likely to ensue as the efficacy of these techniques is validated through their use. Justice also questioned whether some additional data were available on the use of training techniques. We revised the report to include Justice's interpretation of the available data, but we also indicated that, due to data limitations, we could not validate or dispute this interpretation. No further data were available for us to elaborate on the extent of the application of the U.S.-taught techniques.

Appendix IV: Comments From the U.S. Agency for International Development

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

MAR 23 2001

Mr. Jess T. Ford
Director
International Affairs and Trade Division
U.S. General Accounting Office
441 G Street N.W. Room 4964
Washington, D.C. 20548

Dear Mr. Ford:

I am pleased to provide the U.S. Agency for International Development's (USAID's) formal response on the draft GAO report entitled "FORMER SOVIET UNION: U.S. Rule of Law Assistance Has Had Limited Impact and Sustainability" (February 2001).

We commend the efforts of GAO and the report team to assess the impact of rule of law programming by the various agencies in Former Soviet Union (FSU). As we have learned, understanding and measuring the impact of programming in this area is by no means a simple and easy task. However, every effort to do so benefits everyone who is involved in making funding and programming judgments in this very important area. Thus we are especially pleased that the report pulls together the details of many of the substantial accomplishments achieved by USAID rule of law programming since 1991.

Having said the above, we have a number of concerns about the content and presentation of the draft report as they relate to USAID.

First, the report's conclusion that USAID rule of law programming since 1991 has been of limited impact is based on an unrealistic expectation that such assistance should have totally transformed the legal systems in the region and achieved true rule of law there during that time. The report fails to properly acknowledge the nature and

1300 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20523

complexity of the rule of law challenges in the region, the necessarily long-term nature of legal institution building, and the limited rule of law assistance funding provided over the period relative to the needs in the region.

The draft also focuses too narrowly on one aspect of the USAID evaluation process (better measures of activity level results) without acknowledging the many other components of USAID's total evaluation system that have been effective in identifying and assuring incorporation of lessons learned into USAID rule of law programming. Sustainability is also used as a primary measure of accomplishment in instances in which sustainability was neither a realistic or necessary objective of the rule of law assistance activity.

The report also uses an approach that focuses on simply totaling up the number of individual activity accomplishments and failures, rather than on assessing the significance of the many accomplishments that did occur. This results in an understatement of the impact and importance that USAID rule of law programming has had in advancing the law reform process in the region. Finally, the report creates some unwarranted negative impressions about the impact of rule of law programming by using some statements from USAID evaluation reports outside the larger context of those reports.

We also recommend a few editorial changes in the wording of the report to improve its accuracy, and these are listed in Annex 1.

Assessing Accomplishments in Terms of Reasonable Expectations. In a number of places in the report, the substantial accomplishments of USAID rule of law programming are specifically described and noted, but the report concludes that the impact of such programming has been limited because "rule of law has not been established" in the newly independent states, "fully independent, efficient and effective judiciaries have not yet been established", and even some backsliding has occurred.

The draft report does not acknowledge that investments in rule of law programming to-date in the region have been low compared to the magnitude of the challenges faced. The draft report points out that, in absolute terms, substantial funding has been invested in

rule of law programming in the region over the last ten years. However, by any measure, USAID assistance levels for rule of law programming have been extremely low compared to the challenges facing the legal systems of the countries in the FSU. Even using GAO's own figures, assistance for rule of law programming (to all agencies) has constituted only 3% of total assistance provided, averaging only about \$10 million per year for all of the FSU countries combined over the period. While, to our knowledge, no one has ever attempted to estimate the total amount of investment required to reform the legal systems of the former FSU or the amount of external assistance required to support that, it is clear that the needs are enormous and the amounts of assistance needed to adequately support reform of the system far exceed funding allocated to-date for that purpose.

The draft also fails to recognize that the development of effective institutions (whether legal or otherwise) is fundamentally a complex and long-term process, requiring many years if not decades to accomplish. It is a process that sees periodic advances and setbacks, as constituencies and conditions supporting reform change and new challenges present themselves. A senior U.S. jurist recently pointed out that reform of the U.S. court system has taken over 40 years. To suggest that the rule of law (including the full transformation of policies, institutions and practices) can be achieved in a much shorter period of time in countries with no history of rule of law and with limited economic resources is neither realistic nor a meaningful measure of what we should be expecting assistance programs to have achieved at this point.

The principal objective of all rule of law assistance has been and continues to be to encourage and support the initiation and advancement of reform efforts by reform-minded constituencies in each country as those efforts unfold over time. The extent to which assistance has effectively done that (i.e., effectively supported reform efforts) should be the measure of program accomplishment. As will be further discussed below, we think that USAID rule of law assistance has accomplished a great deal in that regard.

It is also important to recognize that, despite the fact that rule of law funding has been made available since FY92, significant rule of law assistance activities only

began on the ground in the region in 1994 (and in some countries much later). Most of the projects included in the report's timeframe (FYs95-98) were essentially "first generation" projects in the region. Designers of those projects were faced with unique and unprecedented challenges, and could not confidently predict, based on previous experience, how far and fast reform in the region would occur. Project designers and implementers took risks in introducing new concepts and technologies, in an effort to increase receptivity to change and to jump-start the reform process. Rule of law development has been and remains a very challenging learning process, and one should not conclude that the effort has failed because every attempted change has not yet been fully achieved.

More recent rule of law programming reflects the lessons learned in those initial efforts. Less emphasis and funding are now being placed in certain areas (such as creation of judicial training centers, reform of law faculties) where reform has been difficult and/or will require a level of effort and resources beyond our capability to address. Greater attention is also being paid to other issues limiting longer-term program impact. For example, USAID recently awarded a cooperative agreement to ABA/CEELI which directly addresses the problem of ensuring sustainability by placing regional institution building advisers in the field to better assist organizations to become self-sustaining. This has helped to address problems of organizational weaknesses in environmental law advocacy organizations in Ukraine, as an example.

Evaluation of Program Results. The report identifies certain program management weaknesses (measurement of results and lack of long-term sustainability plans) as limiting the impact and sustainability of rule of law assistance. We agree that improvement is necessary in measuring activity-level results and that greater emphasis could be given to reviewing long-term sustainability issues. However, we do not agree with the implication of the report that USAID's current methods of assessing and evaluating program impact are not adequately identifying results or that this is in any way significantly limiting program impact and sustainability.

USAID assesses the results of rule of law programming at virtually every step in the program strategy development

process and during and after activity design and implementation, as follows:

- Country Strategy Development: past rule of law assistance strategies and results are reviewed by both missions and AID/Washington as part of the process of formulating, reviewing, approving and updating missions' five-year strategic assistance plans
- Activity Development and Design: activity design officers review past results, lessons learned, and conditions affecting activity success as part of every new rule of law activity design
- Annual Results Review and Resource Request (R4): both missions and AID/Washington annually conduct a thorough review of results achieved over the past year and activities proposed for the next year
- Program Objective Team (POT 2.2) Reviews: the POT team for Strategic Objective 2.2, Rule of Law, conducts an annual assessment of progress on rule of law programming within the region, including assessments of individual country programs, and this is reviewed with senior Bureau management
- Use of external indices: USAID uses available indices and analyses of rule of law progress prepared by Freedom House, the Department of State and others
- Internal and external assessments and evaluations: USAID finances external evaluations and also conducts internal assessments using staff rule of law specialists
- Continuous monitoring by Mission and AID/W Specialists: USAID has experienced Democracy & Governance/Rule of Law advisors in both its field missions and AID/W who continuously monitor activity progress

We believe that this multi-layered review process provides us with a very good picture of what is happening in assisted countries and the extent to which results are

being achieved or not from our rule of law programming. The information gained and lessons learned from these efforts have been used in recent years to target or retarget assistance efforts to areas offering greater likelihood of success.

We agree with the draft's finding that the measurement of results at the activity level could be better and, as part of the various reviews listed above, greater attention has been given to the development of better results indicators. Within the last two years, USAID has made a number of efforts within the region to specifically review and improve rule of law indicators. For example, USAID/Russia has conducted several assessments focusing on ROL indicator improvement and will be addressing that again with contractor assistance later this year. USAID/Ukraine has also worked over the past year with outside contractor assistance to review and strengthen its democracy strategic objectives, and as a result has revised its results framework, indicators, performance monitoring plans and performance data tables for rule of law activities.

It is important to emphasize, however, that the deficiencies in this respect do not mean that we do not understand the results of rule of law programming or that any such shortcomings have significantly limited the impact and sustainability of assistance programs. Program success is affected by many factors, some of which are crucial (such as the two mentioned in the report---political will and lack of resources). We do not think that the report establishes a causal relationship between the lack of better indicators and the problems of program impact, nor does it put what program management concerns there are in proper perspective when compared with other factors affecting program impact and sustainability.

We agree that more external evaluation of the rule of law programming of all agencies is desirable. Significant external evaluation work has already been done by USAID, as reflected by the numerous quotations from those assessments in the draft report itself. The USAID Europe and Eurasia Bureau also began increasing its external evaluation of rule of law programming in 1999 by initiating a rule of law impact assessment program. Thus far, that program has assessed rule of law activities in Armenia, and at least two additional countries should be assessed this year. Expansion of the program has been constrained by the lack

of funding for regional evaluation activities. Also, USAID's Global Bureau has for some time been working on a review of worldwide USAID rule of law program accomplishments, which will focus largely on Eurasia and Latin America. The results of this review should be available in July of this year.

Finally, while the draft report acknowledges shortfalls in program management in agencies other than USAID, sometimes the distinctions among agencies are not always made clear.

The Issue of Sustainability. We concur with the report that sustainability is a very important concern with rule of law programming and that some rule of law activities have not yet proven to be sustainable. In providing rule of law assistance, USAID seeks to support efforts that will be sustainable in the longer-term, and an enormous amount of time is spent on sustainability issues during the development, implementation and assessment of our program strategies and activities.

It is important to recognize, however, that the principal reason for providing assistance in some cases is not to create a sustainable activity per se but to assure that important building blocks for accomplishing larger program objectives (which hopefully will become sustainable) are put in place. For example, support for judges' associations is often criticized because these organizations have faced serious difficulties in achieving sustainability. Yet these associations have played and will continue to play an extremely important role in the overall legal reform process by providing a means by which important voices in that process are marshaled and heard and in building the constituencies needed to formulate and implement truly effective reforms. While we would like judges' associations to achieve long-term sustainability as quickly as possible, and in fact help them as much as possible to achieve that end, continued financial support for them in the short-term is essential to advancing the larger reform objectives of the assistance program and is essential notwithstanding longer-term sustainability issues. This same reasoning applies to support for other non-governmental legal advocacy and service organizations, which play critical roles in the reform process by building constituencies for reform, monitoring the progress of reform efforts, and applying and maintaining pressure on

See comment 1.

government bodies to follow through on promised reforms. Continued short-term support to these organizations is often necessary to build and maintain a receptive environment (i.e., the political will) for further reforms.

We do not agree with the approach taken in the report that sustainability should be judged based on each component activity of a program; nor should the success of every activity be judged primarily from the point of view of its present or even future sustainability. That approach does not, in many cases, measure the effect of the assistance in achieving its principal objectives and incorrectly implies that project designers and implementers are paying insufficient attention to sustainability. Nor does it recognize the significant challenge of mobilizing reform efforts in difficult environments.

Understatement of Significance of Program Results.

While the draft lists a number of accomplishments of USAID rule of law programming in various countries, the significance of those in terms of affecting changes in those countries is not always fully discussed in any detail. This gives the misleading impression that all successful and unsuccessful efforts have been of roughly the same significance and importance and have largely balanced or cancelled each other out.

In fact, rule of law assistance in the region has had substantial impact in shaping the direction of law reform, even though the job is far from finished.

In Russia, a great deal of political will for legal reform has been mustered, both in the early years of perestroika and through the Yeltsin and Putin administrations. The Civil Code was passed and is being implemented by a system of commercial courts created only in 1992, and which have become stronger with each passing year. The courts of general jurisdiction struggled to break free from executive branch control, and succeeded in getting enacted a totally new legal framework (Constitutional Law on the Judicial System, 1996; Law on the Judicial Department, 1998). USAID-funded assistance was a significant factor in the establishment of the Judicial Department, which has given the courts more budget clout within the Russian government and positioned them for further growth and change. USAID assistance has also set in motion a process whereby the Russian judiciary will be

See comment 1.

integrated into international and world bodies which apply world human rights and other standards. These are all significant accomplishments of a relatively young rule of law assistance program, notwithstanding the fact that progress may have been slower in other areas.

Although progress in Ukraine has been difficult, USAID (and DOJ) assistance is helping to remove roadblocks to the passage of a new Law on the Judiciary, which is key to further reform in the sector.

Both USAID/Ukraine and USAID/Russia have also reported substantial accomplishments in the commercial law area (including work with the commercial courts). They believe that the failure to assess these activities as part of the GAO review presents a picture of accomplishments within the legal sector that is considerably less than what has actually been achieved.

Use of Evaluation Statements. The report in a number of places references or quotes isolated statements taken from various USAID evaluation reports. Some of these statements have been taken out of context and without an explanation of the evaluators' complete findings and conclusions. For example, on page 11, the draft states that a USAID study found that the effect of U.S. legislative and policy assistance to Russia in the mid- to late 1990's could not be determined. The draft report does not point out that this evaluation was only of ABA/CEELI assistance for such purpose (which was only a small part of U.S. legislative assistance during that period), nor that one of the principal reasons why the evaluators could not render a judgment (one way or the other) on the impact of ABA/CEELI's assistance was that the persons requesting the assistance were not available for interview when the evaluation team was in country.

Similarly, on page 15, the draft report implies that USAID's view of the substantial progress made on judicial reform in Georgia is off the mark, because a 1999 USAID-sponsored evaluation stated that a Soviet mentality "still prevails" there and the judiciary is viewed as corrupt. The quoted statement is actually from a part of the evaluation describing the reform activities of a non-governmental organization and the challenges it faced in 1997-98 in its efforts to promote implementation of the then new Criminal Procedure Code. The statement was not

See comment 2.

See comment 3.

See comment 3.

10

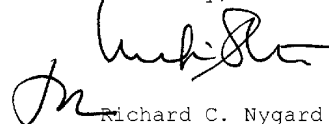
describing recent conditions in Georgia after several more years of assistance and reform efforts. The evaluators in the 1999 study concluded, in fact, that despite the challenge of old mentalities, the NGO in question had compiled an impressive record of activities; and that, overall, the impact of USAID assistance programs through ABA/CEELI was "apparent and impressive" and that the results were "designed for sustainability".

See comment 3.

We are very concerned with this selective use of statements from the various USAID evaluation reports. These reports are often substantial documents that include extensive discussions that put any statements made into their proper perspective and context. In addition to a description of the challenges, those evaluations have also included positive assessments of progress on reforms and on USAID's efforts to support the legal reform process. They provide a fuller and more complete picture of what has happened and should be reviewed to get a proper understanding of what USAID has accomplished in the area of rule of law.

Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff in the conduct of this matter.

Sincerely,



Richard C. Nygard
Acting Assistant Administrator
Bureau for Management

Annex 1

Recommended Wording Changes

1. On page 3, first paragraph under "Results in Brief", third sentence, after "...the United States helped to establish legal education clinics in Russian..." add "and Ukrainian" [law schools].
2. On page 4, the comment "Further, none of the U.S. agencies, including USAID, have effective monitoring and evaluation systems in place to assess the longer-term results and sustainability of their efforts and reorient their projects based on the lessons learned." is not consistent with and directly contradicts the comments in the second full paragraph on page 9 regarding the extent to which rule of law programming has been adjusted by USAID over the years, and in particular the first sentence which reads "Though the program has generally included these elements throughout its existence, it has evolved over the years in response to lessons learned about effectiveness and to adapt to emerging constraints." We believe that the latter statement is the more correct one, and that the sentence on page 4 quoted should be revised accordingly.
3. On page 6, in the sentence immediately preceding Table 1, change "was envisioned by the U.S. Government" to read "were originally envisioned by some in the U.S. Government".
4. On page 11, second full paragraph, second sentence, change "A key focus of the USAID assistance program..." to read "One component of the USAID ROL assistance program...". Parliamentary assistance has been only one of a number of initiatives in the rule of law area in Ukraine.
5. Page 14, first paragraph, fifth sentence, "disbursed" should be "dispersed".
6. Page 21, last sentence, change "the fate of many of these organizations is still uncertain" to read "for the foreseeable future most will continue to rely on donor support". This more accurately reflects that many organizations will continue to function into the foreseeable future and that some, in fact, have continued to operate after USAID funding has ended. While in

Russia, a GAO evaluator reported to the USAID Mission that they had been surprised by the number of NGOs that they had found that were, in fact, continuing to strongly fight on for legal reform even after USAID funding had ended. We believe that this finding should be included in the report.

7. Page 23, second paragraph, last sentence, change "...and won demands that the government relocate those adversely affected." to read "...and won demands that the dump be constructed at a different location in accordance with zoning laws."

8. Page 26, first paragraph, third sentence, change "the most important issues..." to read "the most important NGO development issues..."

9. On page 27, second paragraph, first sentence, change "...to continue the educational programs..." to read "...to continue the advocacy, educational and legal services programs..."

GAO Comments

The following are GAO's comments on USAID's letter dated March 23, 2001.

1. USAID disagreed with our analytical approach to assessing sustainability and the emphasis we placed on sustainability in evaluating program success. USAID pointed out that certain organizations can have significant impact on rule of law development even though they may not be sustainable over the long term. We believe that our approach to assessing sustainability of the program is sound. In addition to reviewing the sustainability of the program's component activities, we also reviewed the overall sustainability of rule of law development as reflected in the Freedom House scores. Both approaches raise concerns about sustainability. Furthermore, we assessed both the impact and sustainability of the projects we reviewed and have cited examples in the report where organizations supported by USAID have had some impact regardless of whether they were sustainable. However, given the long-term nature of rule of law development and the many competing demands for limited assistance funds, we believe that sustainability of program results is critical to program success and was an appropriate emphasis for our analysis.
2. USAID indicated that we did not adequately acknowledge significant program results in the area of commercial law. In general, as we had discussed with USAID, due to time and resource constraints, we did not assess the impact of USAID assistance in the area of commercial law. However, insofar as available evaluations provided information on accomplishments in this area, we included this information in our report.
3. USAID criticized the report's use of references and quotes from evaluations as inappropriately taken out of context. We reviewed each reference to an evaluation and do not believe that we have distorted the meaning of the information cited, as USAID suggested. However, where appropriate, we have revised the language or used additional or alternative references in our report to avoid potential misinterpretation.

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

Stephen Lord, (202) 512-4379
James Michels, (202) 512-5756

Acknowledgments

In addition to those named above, E. Jeanette Espinola, Mary E. Moutsos, Maria Z. Oliver, Rona H. Mendelsohn, and Jeffery Goebel also made key contributions to this report.

Ordering Information

The first copy of each GAO report is free. Additional copies of reports are \$2 each. A check or money order should be made out to the Superintendent of Documents. VISA and MasterCard credit cards are also accepted.

Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

Orders by visiting:

Room 1100
700 4th St., NW (corner of 4th and G Sts. NW)
Washington, DC 20013

Orders by phone:

(202) 512-6000
fax: (202) 512-6061
TDD (202) 512-2537

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

Orders by Internet

For information on how to access GAO reports on the Internet, send an e-mail message with "info" in the body to:

Info@www.gao.gov

or visit GAO's World Wide Web home page at:

<http://www.gao.gov>

To Report Fraud, Waste, and Abuse in Federal Programs

Contact one:

- Web site: <http://www.gao.gov/fraudnet/fraudnet.htm>
- E-mail: fraudnet@gao.gov
- 1-800-424-5454 (automated answering system)